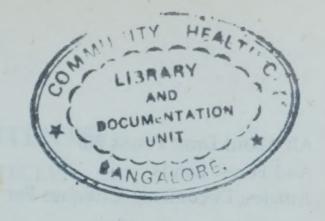
# ALL ABOUT DRAFT FOREST BILL AND FOREST LANDS



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# ALL ABOUT

# DRAFT FOREST BILL AND FOREST LANDS

Towards Policies And Practices
As If People Mattered

Articles, Documents, Critiques For Debate on Draft Forest Bill And Against Privatization of Forest Lands By Commercial and Industrial Interests

Editors:

S.R. Hiremath Sadanand Kanwalli Sharad Kulkarni



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# PREFACE

There has been a close and living relationship between the environment and people especially the tribals and rural poor who are critically dependent on natural resources like forests, grazing lands and rivers for centuries. People had the right to use these natural resources for their basic needs like food, fodder for cattle, sheep and goats, fuel for cooking, leaves for manure, small timber for farming and agricultural implements and raw material for artisans. However, these century old rights of people were seriously challenged and curtailed by the British rulers and later by our own government after 1947 who tried to use the forests and other natural resources as a source of revenue for the State and for the commercial and industrial purpose.

This process of governmentsization and consequent control by centralised bureaucracies had very adversely affected the earlier community control systems for management of these natural resources. Further, this process has benefited the more powerful and Industrial and Commercial interests and alienated the local people even the poor who are critically dependent on them. All this has contributed to the worst environmental crises that we all face today.

There have been significant attempts in the 1980s and early 90s to reverse the above trend and work towards people oriented policies to practices on the ground. This book is about an important attempt in this direction.

This book "All About Draft Forest Bill and Forest Lands" is being published on the occasion of the South India Level Workshop the Forest Bill and Forest Lands being held on September 27-28;94 in Bangalore. Several eminent people from all over the country who have contributed significantly to the environmental movements, in this country like Dr. K. Shivaram Karanth, Common Lands movement in the Karnataka, Shri Chandi Prasad Bhatt, the Chipko movement in Himalayas, Prof. M.K. Prasad of the Kerala Shastra Sahitya Parishad, the Silent Vallety movement, Dr. Madhav Gadgil of the Centre for Ecological Sciences, Dr. Ramachandra Guha fellow, Jawaharlal Nehru Museum are participating in this workshop. This

workshop is organised by the Samaj Parivartana Samudaya (SPS) and the Centre for Ecological Sciences (CES) under the auspices of the Federation of Voluntary Organisations for Rural Development in Karnataka (FEVORD-K) and co-sponsored by the leading organisations in South India from the various States.

The purpose of this book is to bring important articles and documents relating to two issues namely, the Draft Forest Bill and privatization of forest lands for raw material needs of industries and facilitate wide spread debate in the larger perspective of the forestry issues among the activists, the Scientists and some concerned bureaucrats leading to peopleoriented policies and practices. The articles the new forest draft entitled. "The Conservation of Forests and Natural Ecosystems Act" have been written by persons who have been long associated with the issues of forestry including the well known debate in the early 80s against the draft of the then forest bill which was fortunately withdrawn. In addition there are articles and documents which relate to the grassroot attempts to see that the progressive policies and legislations are indeed used on the ground so that the interests of the tribals and the rural poor are not made subservient to the greed of the more powerful sections of the society. Regarding the issue of the forest lands, the attempts that are going on at present against the retrograde step of the Ministry of Environment and Forest led by the Minister of State Shri. Kamalnath to open "degraded" forest lands to industries for growing captive plantations are also described. The widespread efforts by activists, scientists and Policy makers to protest against this retrograde step and to suggest suitable alternatives involving people as decision makers in the Joint Forest Management (JFM) are also included in this book. This book also includes a draft National Policy on Common Lands Resources (CLRs) prepared by a sub grant of then National Wasteland Development Board (NWDB) which also need to be widely discussed and debated.

Due to Limited time, we could not include an important contribution entitled "People's Forestry Bill" (an alternate bill to the Draft bill) by Dr. Madhav Gadgil and Shri Sheshagiri Rao of the Centre for Ecological Sciences, Indian Institute of Science, Bangalore. We hope to include it in the later edition of this book. The article however, is being presented and distribute by the organisers at the Workshop on September 27-18', 94.

We are most hopeful that this book will contribute towards a meaningful debate on these two vital issues and also building effective coalitions of activists, scientists and some concerned bureaucrats at various levels in decentralized and democratic manner and mobilize the public opinion and bring effective pressure on the governments. All this, we are hopeful, will lead to people-oriented policies, legislations and practices. We need to build on earlier successes like withdrawing of the anti-people forest bill in 1980-81 and contributing towards an alternate people oriented Forest Policy, adopted by the Parliment in 1988, the introduction of Joint Forest Management (JFM) policy in the protection of forests and development of degraded lands through active involvement of voluntary agencies and more importantly local people as decision makers (through policy circular of the Ministry of Environment and Forests, Government of India dated 1.6.1990) learning from the successful experiences of the Chipko Movement and the West Bengal Forest Department in Arabari area. The winding up in 1991 of the controversial Karnataka Pulpwood Limited (KPL) meant for using vast tracts of forest lands for captive plantation for a highly polluting industry and shelving of the Silent Valley Power Project in Kerala preserving rare heritage of bio-diversity.

We are thankful to all the contributors and the publishers of some of the articles which are included with due to acknowledgement.

We, on behalf of Samaj Parivartana Samudaya (SPS), Centre for Tribal Conscientization (CTC) along with FEVORD-K and other organisations who have been part of many of the efforts described above during last two decades look forward to the responses from the activists, people's movement, policy makers, scientists and other, readers so as to include them in the later edition of this book.

Dharwad. 27.9.1994

S.R. Hiremath Sadanand Kanwalli and Sharad Kulkarni.

#### INTRODUCTION: FORESTRY AS IF PEOPLE MATTERED

S.R. Hiremath, Sadanand Kanwalli and Sharad Kulkarni.

#### Genesis of the problem.

"Nature can never be managed well unless people closest to it are involved in its management and a healthy relationship is established between nature, society and culture. Common natural resources were earlier regulated through diverse, decentralised community control systems. But the state's policy of converting common property resources into government property resources has put them under the control of centralised bureaucracies, who in turn have put them at the service of the more powerful. Today, with no participation of the common people in the management of local resources, even the poor have become so marginalised and alienated from their environment that they are ready to discount their future and sell away the remaining natural resources for a pittance".

"Statement of Shared Concern in the second Citizen's
 Report on the State of India's Environment".

When over 50 of us from all across the country signed the above statement of shared concern in the Second Citizen's Report published by the Centre for Science and Environment, we were describing the genesis of the problem of environmental degradation and alienation of the local people from the natural resources. This process of alienation began around 1860 during the colonial days when the British began to "reserve" the forests as a source of revenue for the State and for their commercial and industrial needs back home and also for the colonial infrastructure like the railways in India.

This policy of the British seriously affected the close and living relationship between the natural resources and people especially the poor who are critically dependent on them for their survival. This process of governmentisation of the Common Property Resources (CPRs) like the forests and its consequent adverse impact on the people was clearly seen by the social thinkers like Jyotiba Phule who warned the people against the conspiratorial designs of Her Mejesty's Government's bureaucracy in the following words as early as 1882 in his Marathi book" Shetkaryacha Aasud" (Cultivator's Whipcord):

"In the past the peasants who had small pieces of land who couldn't eke out enough from it for their survival used to eat fruits from the nearby forests and used to collect leaves, flowers and dried tree branches and by selling these to others supplemented their income. They also used to maintain a couple of cows or goats and were living happily in their villages depending on the village common grazing land. But H.M.'s Government's conspiratorial bureaucracy have used their foreign intelligence and have newly established the great forest department and have incorporated all mountains, hills, vallicys alongwith barren lands, and village common grazing lands in this department thus making it impossible for the goats of the poor peasants to find even breathing space in the forests..."

The brief history of forest laws and policies from 1855 to the present will be described later in this article.

#### Purpose of this book

The main purpose of this book is to fecilitate debate over two issues, namely, the Draft Forest Bill of The Conservation of Forests and Natural Loo systems Act ) which is meant to replace the Indian Forest Act of 1927 and the attempt of the Ministry of Environment and Forests, Government of India to open up degraded forest lands for exploitation by the industrial and commercial interests. This debate, we feel, should be conducted in the perspective of people oriented policies, legislation and practices, and in the historical background of forest legislation policies and practices.

The various efforts that have gone on in the last two decades in different parts of the country and their contribution towards creating an atmosphere towards people-oriented approach in policies, legislation and practices are also reviewed. These developments include the debate in 1981-82 on the Indian Forest Bill 1980, the two citizen's reports on the state of India's Environment, close and effective scrutiny of the functioning of the Indian Forest Department, the critique of the Social Forestry Programmes, the controversial joint sector company, Karnataka Pulpwood Ltd., (KPL) and its closure in 1991 after 7-8 years of people's movement on the ground and a major public interest litigation in the Supreme Court of India, the adoption of the National Forest Policy in 1988 by the Parliament, the Save the Western Ghats March in 1987-88 and people's participation in the management of natural resources, the amendment to the Forest Conservation Act in 1988, the Kanyakumari March about the rights of traditional fisherfolk, the June 1, 1990 policy circular of the Ministry of Environment and Forests (MEF), Government of India(GOI) about Joint Forest Management (JFM) involving the local communities and voluntary agencies and the subsequent adoption of this policy by over 15 States issueing Government Orders and inclusion of people's participation and multidisciplinary approach components in the Western Ghats Forestry and Environment Project (1992-98 in Karnataka and the debate on the Alternatives to Centralized Water and Energy Systems. The three major successfu movements that contributed significantly to these developments in these two decades are the Chipko Movemen in the Himalayas led by the Dasholi Gram Swarajva Manda (DGSW), Gopeshwar, Chamoli Dist, U.P., the Save the Common Lands Movement led by the Samaj Parivartana Samudaya (SPS), Dharwad, Karnataka and the Save the Silent Valley campaign led by the Kerala Shastra Sahitya Parishat (KSSP) Trivendrum, Kerala - all three have received widespread acclaim including the Indira Gandhi Paryavaran Puraskar by the Ministry of Environment and Forests.

#### Indian Forest Bill 1980

In 1981, there was a unique and first significant initiative when the activists working among adivasis and rural poor and some scientists from all over the country came together to discuss the draft Forest Bill 1980 which was considered very anti-people. The provisions of the Indian Forest Bill were clearly designed to discourage the use of forest land and produce by the poor. Terms like forest and cattle were defined widely. Forest officers were given very wide powers of arrest and of seizure of property to deal with the offences suspected to be committed in respect of forests.

The critics of the draft bill were no more on the defensive but were demanding not only a modification of the bill but also a complete reconsideration of the forest policy that existed then-which was basically a continuation of the colonial legacy considering the local people like the adivasis as the enemy of the forests and seeing no positive role for them in the forest protection inspite of their having co-existed with the forests in a harmonious way for centuries and whose culture is most intricately woven with the forests. Some of us were very closely associated with this successful debate which led to the dropping of this anti-people bill before being introduced in the Parliament. More significantly, the Parliament adopted in 1988 a much better National Forest Policy than the earlier one. Some of the important articles about this debate can be found in the book "Towards A New Lorest Pelicy" by Walter Fernandes and Sharad Kulkarni. The Centre of Iribal Conscientization, Pune played an important role in this debate on the Forest Bill 1980.

This debate on the Indian Forest Bill 1980 marked the begining of debate on the policies and legislations by the activists.

scientists and others who had taken up in a serious fashion the long standing grievances of forest-dependent communities.

A significant outcome of this debate was to bring under close and critical scrutiny the working of the Forest Department in the years that followed. The Indian Forest Department, set up by the British in 1864 is the biggest landlord controlling over one-fifth of the country's land area and affects the life of the great majority of the people of India consisting of tribals, pastorals, peasants, slum dwellers and industry who are heavily dependent on the produce of forests as the source of fuel, fodder, construction timber, or raw material. Eventhough there have been protests through the period of Colonial Rule and later, against the working of the Forest Department and in defense of forest rights, this 1981 effort marked the beginning of a public debate in the direction of Forest Policy. phenomenon of picking up, in any serious fashion, the long standing grievances of forest dependent communities by the activists and intellectuals began in the 1970s as compared to the rights of cultivators and factory workers which figured high on the agenda of the national movement atleast from the 1920s. (See Ramachandra Guha's article in this book entitled "Forestry Debate and Draft Forest Act".)

#### Forest Conservation Act 1980

Just around the same period, the Government of India had passed an ordinance and later the Parliament passed an act called "Forest Conservation Act 1980". This was a significant development as it was the first Act after the subject of the Forests was transfered to the concurrent list in the Consitution in 1976. This short two page Act prohibits State Governments from declaring any reserve forests or any portion thereof, as non-reserved without prior permission of the Central Government. It also prohibits, the State Governments from allotting any forest land or portion thereof, for any non-forest

purposes. Even though this act did have some defects like it applied only to reserve forest lands, it had a significant impact in preventing many State Governments from transfering vast areas of forest lands for other purposes as was done in the earlier period. Some of these deficiencies were corrected through a major amendments to this act in 1988 which came into force on March 15th, 1989.

# Citizens Reports on the state of India's Environment

Just as the debate on the Indian Forest Bill 1980 had begun, Ravi Chopra then with the Centre for Science and Environment (CSE), New Delhi was going around the country meeting with activists and scientists working on environmental issues. These efforts brought together activists, scientists and some policy makers together to produce two excellent citizen's reports on the State of India's Environment by the Centre for Science and Environment edited by Anil Agrawal et al. These reports contributed significantly to increasing awareness about the vital environmental issues and to help bring them on the national agenda. The subsequent books by the CSE especially the "Fight for Survival: Peoples' Action for Environment" contributed to the awareness of many people's movements across the country for protection of environment and the later book "Towards Green Villages" describes innovative afforestation programmes and problems associated.. In the meanwhile, the Bhopal disaster (Union Carbide), the worst industrial accident, also contributed to the increasing concern among the public at large about the environmental issues.

# Social Forestry Projects

In various parts of the country, the activists groups working with the tribals and rural poor, exposed the bias of this important forestry project towards industrial and commercial interest at the cost of meeting the biomass needs of the poor for

fodder, fuel wood etc., The Samaj Parivartana Samudaya (SPS) in close colloboration with the Federation of Voluntary Organization for Rural Development in Karnataka (FEVORD-K) prepared in 1985 a comprehensive memorandum calling for major conceptual and operational changes in the five year Rs. 55 crore project entitled "Karnataka Social Forestry Project" and submitted it to the Karnataka Government, the World Bank and Overseas Development Administration (ODA) of United Kingdom both of whom funded this project. Through sustained grassroot pressure on the Forest Department and effective campaign at the policy maker level, some changes in this project were brought about, after the Mid Term Review Mission which appreciated the suggestions of FEVORD-K. The real impact in terms of including people's participation component and the multidisciplinary approach through Committees at various levels was made on the next project (funded by the ODA again) called Western Ghats Forestry and Environment Project (1992-96). Please see the article in this book "Forestry Policies, Legislation and Practices: Experience of Voluntary Agencies in Karnataka " by S.R.Hiremath et al.

#### Ministry of Environments and Forests Formed

In reorganisation of the departments in the Central Government made in 1985, the Forest Department was shifted from Agriculture Department to the Department of Environment and these two together formed the Ministry of Environment and Forests. This provided a better setup to deal with environmental and forestry issues together. Also, recongnising the need for afforestation programmes especially by the Non Governmental Organization (NGOs), the Government also consitituted a National Wasteland Development Board (NWDB) with an ambitious plan to bring about 5 million acres of land under tree cover every year.

#### Karnataka Pulpwood Ltd. (KPL)

Towards the end of 1984, an important people's movement began in Karnataka to protest against a joint sector company called Karnataka Pulpwood Ltd. (KPL). This company was formed with 51% shares of the Government of Karnataka owned Karnataka Forest Development Corporation (KFDC) and 49% shares of the Birla owned highly polluting industry called the Harihar Polyfibres (HPF). For this Rs. 30 crore project, the Government was to lease 75,000 acres of mostly forest lands for 40 years at Re. 1/- per acre per year. This was to deprive 5,00,000 villagers in four districts of Karnataka of their basic necessities like the fodder, fuel, fruits, small timber and raw materials for artisans.

This people's movement supported by SPS and similar organizations fought against the Government's anti people forest policy for over eight years through a combination of innovative people's direct action at the field-level in the form of Kittiko-Hachchiko (pluck and plant) Satyagrahas, and a major public interest litigation (Writ Petition No. 35 of 1987) by the SPS with Dr. K. Shivaram Karanth as the first petitioner in the Supreme Court of India. Finally, the movement built enough pressure on the legislators, 72 of whom from all political parties brought effective pressure on the Government for the closure of KPL.

Charlie Pye-Smith, a regular presenter of the BBC World Service's programme "Global Concern" has written the following in his book: "In Search of Wild India" which was also telecast in a three part serial.

"Nowhere in India has the power of the meck to change the course of history been more brilliantly demonstrated than in Kusnur, a preturesque, thatchrooted village of some 0,000 people nesting in the dry, red-earth foothills of the Western Ghats.

While the people of Kusnur cast themselves in the role of David against the Goliath of Karnataka Pulpwood Ltd. - and pitted themselves against both the state government and the immensely influential Birla family, the owners of Harihar Polyfibres - Samaj Parivartana Samudaya filed a public interest suit against KPL and others in the Supreme Court, obtaining a stay order preventing further planting by the Company in May 1987. The state Government subsequently transferred a further 30,000 acres of land to KPL. In the end the pressure proved irresistible and on 3 October, 1991 the Karnataka cabinet decided to throw in the towel: KPL, it was announced, was to be wound up."

This movement which has been described in a book entitled "Quest for Justice" (English) and "Kittiko Hachchiko Satyagrah" (Kannada) by Sadanand Kanwalli has set important precedents for protection of common lands (forest lands) The final order of the Supreme Court dt. 26.3.92, the Government of Karnataka Order dt. 24.10.91 and Central Government's affidavit in the Supreme Court that transfer of forest lands to a joint sector company without prior permission of the Central Government violates the Forest Conservation Act 1980.

#### Save the Western Ghats March (SWGM)

This was a long March along the Western Ghats for 100 days from the Southern tip at Kanyakumari and the northern tip at Navapur, Dhulia District in Maharashtra which started on November 1, 1987. The two groups of core marchers along with many concerned scientists and activists joined together in Goa for three day conference at the end of the March. It created tremendous awareness among the public as to the state of environment of tropical forests in the Western Ghats which have been the origin of most rivers of South India and which are the backbone of the ecology and economy of the deccan peninsula. Over 150 voluntary organizations organised and participated in this unique March.

In Karnataka, the SPS which coordinated the March at the State level also initiated a dialogue with the Centre for Ecological Sciences (CES), Indian Insitute of Science, Bangalore and with active colloboration of FEVORD-K about working out details of effective people's participation in the management of natural resources. The CES published a technical monograph based on nearly two years of interaction between the scientists and activists. Later, the SPS with FEVORD-K published a booklef called "Janaranya: People's participation in the Management of Natural Resources" on the eve of the cycle Jatha from all over Karnataka to Bangalore for the closure of KPL. The preamble to this report given below expresses the purpose very effectively.

"It is necessary to empower the local community at the village level and ensure that each settlement will clearly have locally defined environment and natural resource base of its own to protect, care for, improve and use. If necessary, change can be brought out in laws. The entire process of political decentralisation and involvement of Panchayat Raj Institutions must ultimately end up in solving the most vital problem facing India today, i.e., regeneration and restoration of the environment, specially the ecologically fragile regions. The only way to achieve this objective would be by deepening democracy and participation at the village level as much as possible. Every settlement in the country must have a clearly defined environment to protect, care for and use this as an open forum in which all can get together to discuss their problems and find common solutions".

 Report of the Steering Group on Environment, Forests and Wastelands Development for the formulation of Eight Five Year Plan (1990-95). Planning Commission, Government of India. July 1989, pp. 134.

The SWGM in Karnataka was most effective in bringing together scientists and activists together for working as partners on subsequent environmental issues.

This March inspired another important event in 1989 called the Kanyakumari March organized by National Federation of Fishworkers supported by groups like the SPS; This March was effective in creating awareness about water - a life saving resource and what is happening to the traditional fishworkers due to trawlers, pollution etc.

#### **National Forest Policy 1988**

In December 1988, the Parliament passed a new Forest Policy resolution replacing the earlier one in 1952. The Resolution stated the basic objectives of forest policy as follows.

It categorically states that "The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be sub-ordinated to this principal aim."

The policy statement asserts that the existing forests and forest lands should be fully protected and their productivity improved. Minor forest produce should be protected and improved, so as to continue to provide sustenance to tribal population.

The national goal should be to have a minimum of one-third of the total area in the country under forest or tree cover. A massive need based and timebound programme of afforestation and tree planning should be undertaken.

The Resolution has special article on tribal people and forests. It is stated that having regard to the symbiotic relationship between the tribal people and forests, all agencies responsible for forest management should see that the tribal people are closely associated in the protection, regeneration and development of forests so as to provide them gainful employment. Efforts should be made to contain shifting

cultivation. The practice of providing forest produce at subsidised prices to industries should be discouraged.

Thus the new Forest policy Resolution is a very welcome step and makes a departure from the earlier commercially oriented bureaucratic forest management practice.

This also shows that a sustained affort by a coalition of activists, scientists and some concerned government officials can make a decisive impact on an important policy like the National Forest Policy affecting millions of tribals and rural poor all over the country (The National Forest Policy 1988 is included in this book as Document No.2)

# Joint Forest Management (JFM)

Based on the New Forest Policy of 1988, the Ministry of Environment and Forests (MEF) of the Govt. of India issued an important policy circular dated June 1, 1990 which fecilitates the involvement of local communities and voluntary agencies in the development of degraded lands. The local communities and voluntary agencies are considered here as partners with the Government for protection of forests and development of degraded lands. Meeting the needs of the local people is given primary importance. This represents a very radical departure from the earlier policies in which the Forest Department considered local people as the destrovers of forests who needed to be controlled and the department had gone ahead and armed itself with powers to do the same.

One of the major reasons for introducing JFM is the sustained pressure on the Government through an effective and well documented critique of the Forest Departments and a close scrutiny of its functioning including its claims. The major discrepancy about the extent of land under forest cover between the tigures given by the Forest Department and those by the Satellite imagery proved inadequancy of the statics of the Forest

Department. The critique of the Forest policies during the British and Post British period (eg. Ramachandra Guha in both EPW of Oct. 29, 1983 and "Commercial Forestry: Defending the indefensible", in the book "Whither common Lands?" by the SPS et al.) have had impact as to the role of the Forest Department. The so called scientific management of Forests was been very well analyzed in a foreword to the Book "Joint Forest Management. Regulations update 1992" by Arvind Khare, of Society for Promotion of Wasteland Development (SPWD) in the following words.

"Scientific management of forests' in India has survived more than 100 years. Unfortunately, the forests have not. It has benefitted many governments, contractors, and companies, but not those who kept the forests intact for centuries. 'The right of conquest' converted people's 'rights' into 'privileges', to 'concessions'; in a number of places forcing them out of their habitats into urban slums or as migrant labourers. Erosion of people's control over their own resources and decline in the resources' health are not unconnected. Thus the so-called 'scientific management' might have served the strategic colonical needs; it proved to be the worst assault of a colonial power on the wealth of the colonised because it not only took away the wealth but also destroyed a wholesome lifestyle and culture, and indeed hit at the very base of survival. Thousands of social movements against this onslaught provide ample testimony to the brave struggle of the people to protect their life and culture.

The transfer of power' in 1947 and adoption of 'democracy' as a political system for India, did not alter the ground realities. The destruction of forests continued unabated as also the protest movements by people. By the seventies some of the grassroom movements articulated the problem in no uncetain terms. The struggle is for control of resources by the people. This is also the 'essence', of democracy. It, however, took more than 43 years after independence to see a ray of hope.

In a major shift from the early history of forest management the Ministry of Environment and Forests sent out a circular on 1st June 1990, supporting the involvement of village communities and NGOs in the regeneration, management and protection of degraded forests".

Now more than 15 states have passed Government orders formalizing JFM. In Karnataka, again SPS, FEVORD-K and CES worked together to produce a draft order on JFPM (Joint Forest Planning and Management) and the Government of Karnataka passed an order on April 12, 93; Again, there is a systamatic follow up of its implementation at the ground level by involving the Forest Officials and NGOs. Many forest officials are showing keen interest in the success of JFPM at ground level and the Secretary of the Central JFPM Committee M.L. Ramaprakash, a Conservator of Forests is providing excellent support for bringing together the NGOs, local communities and Government officials.

In the 80's, there has also been greater awareness about the environmental issues in the country and more protest movements like the Narmada Bachao Andolan (NBA), people's movement against Suvarnekha Dam and other major dams have come up.

#### Alternatives to centralised Water and Energy System

While we must protest what is wrong with the present development projects especially mega projects like the Sardar Sarovar Project, the Kaiga Atomic Power Project or Joint Sector Companies like the KPL, we must also contribute to work out people oriented alternatives.

In this area, several NGOs and some Governments have contributed significantly. For example the Watershed Development Projects; The Karnataka Government was the first State to initiate multi-disciplinary teams for Watershed Development in mid 80s which have created very good

watershed projects one in each district; However, the people's participation component was not effective. This is where the NGOs needed to take the challenge. As a result, now there are very good wathershed projects with people's participation eg., Pidow Project with an NGO MYRADA in Gulbarga District and Medleri Integrated Wasteland Development Project (MIWPP) with NGOs India Development Service (IDS) and the Samaj Parivartana Samudaya (SPS) in Dharwad District. Both IDS and SPS worked together for many years with concerned Government Officials for initiating this major integrated wasteland development involving nearly 25,000 acres of forest and other common lands and 50,000 acres of farmer's lands in four mini watersheds.

While the people's movement against KPL was going on, the efforts for this alternative was equally intensive and after six years of sustained effort, the Medleri Integrated Wasteland Development Project involving of NGOs and Government's Watershed Development Cell began in 1992.

Similarly the SPS also been working with other experienced groups like Centre of Applied Systems Analysis to Development (CASAD) Bombay on the issue of alternatives to Centralised Water and Energy Systems since 1992. Several meetings of activists and scientists have been held in Maharashtra and Karnataka and a comprehensive approach to watershed development based on the principles of livelihood needs, equity, sustainability, democracy (People's participation-especially women and landless) and social justice. Also, the SPS along with other groups has published a book entitled "Water for Gujarat: An Alternative" to the Sardar Sarovar Project by Ashvin Shah and there has also been more recent detailed alternative (to the Sardar Sarovara Project) worked out by Suhas Paranjape et al. of CASAD, Bombay.

#### BRIEF HISTORY OF FOREST LEGISLATION IN INDIA.

Forests can never be protected without the active support of forest dwellers which will come forth only when the forest dwellers have a stake in protecting forests. What we really need is a genuine forest policy and legislations that increase people's participation in the development and conservation of forests. Forests can be and will be protected only by the people and they will do this only when they are protected for the people and not only when they are protected for the people and not only when they are protected for the people and not for augmenting Government revenue. We present here a brief reveiw of the forest policy and legislation from around the middle of last century to 1976.

#### Before British Rule

Before the advent of the British Rule in India, there were customary restrictions on the uses of forests. Certain type of trees were regarded as sacred and never cut. Certain areas were regarded as "Deveraya" (God's grooves) and not a living leaf was allowed to be taken from these areas. Even today, we find such Devaraya's in natural condition though their condition is rapidly worsening.

#### British Rule

British realised the commercial value of forests and for the first time tried to establish a rigid control over the uses of forests. a Memorandum providing guidelines restricting the forests dwellers' rights over forests was issued in August 1855 and was later modified in 1894. The guidelines advocated strict restrictions on people's rights over forests.

#### Forest Act 1865

The first Act to give effect to rules for the management and preservation of forests was passed in 1865. The Act empowered

the Government to declare any land covered with trees or brush-wood as Government forests and to make rules regarding the management of the same. The Act came into effect on May 1st, 1865.

#### **Indian Forest Act 1878**

The Indian Forest Act of 1878 repealed the 1865 Act. It was more comprehensive than the earlier one. Forests were divided into (1) reserve forests (2) protected forests and (3) village forests. Several restrictions were put on the people's rights over forest land and produce in the protected and the reserved forests. Thus the 1878 Act continued and extended the Government policy of establishing control over forests. It also made several provisions for the imposition of duty on timber. This duty later became one of the major sources of Government revenue.

#### **National Forest Policy 1884**

The British Government declared it's forest policy by a resolution on the 19th October 1884. The policy emphasised the need for State Control over forests and the need to exploit forests for the purposes of augumenting the State revenue. It paved the way for the regulation of rights and previleges of forest dwellers over forest land and produce.

#### **Indian Forest Act 1927**

The Government of India enacted a very comprehensive Act in 1927 which contained all the major provisions of the earlier Act and the Amendments made thereto including those relating to the duty on timber. This Act is still in force, together with several amendments made by the State Governments.

It is stated in the very beginning that, '(it is), an Act to consolidate the law relating to forests, the transit of forest

produce and the duty leviable on timber and other forest product.' Thus, there is a clear emphasis on revenue yielding aspect of forests.

Forests are divided into three categories viz. reserved forests, protected forests and village forests.

#### Constitutional Changes

Till 1935, the Forest Acts were enacted by the Government of India. In 1935 the British Parliament, through the Government of India Act of 1935, created provincial legislatures and what is known as the dual system of Government came into operation. The subject of forest was included in the provisional legislative list under the Act (item 22.). Thereafter, several provinces made their own laws to regulate forests. Most of these laws were within the framework laid down in the 1927 Act.

After independence, the same policy continued and in the Consititution of India, the subject of forest was included in the State List in the VII Schedule (item 19). In 1976, a major change took place. The subject of forest was transferred from the State List to the Concurrent List through the 42nd Amendment to the Constitution of India. This resulted in the dimunition of States'powers and enhancement of the Centre's powers over forests.

## **National Forest Policy 1952**

After independence, the Government of India formulated a new National Forest Policy which found expression in the National Forest Policy Resolution of 1952. It was declared that the Forest Policy should be based on paramount National needs which were listed as follows:

1. The need for evolving a system of balances and complementry land-use, under which each type of land of

allotted to that form of use under which it would produce most and deteriorate least.

## 2. The need for checking

- denudation in mountainous regions, on which depends the perennial water slupply of the river systems whose basins consitute the fertile core of the country.
- the erosion progressing space along the treeless banks of the great rivers leading to ravine formation, and on vast stretches of undulating wastelands, depriving the adjoining fields of their fertility and
- the invasion of sea-sands on coastal tracts, and the shifting of sand dunes, more particularly in Rajputana desert.
- 3. The need for establishing tree-lands. Wherever possible, for the amerlioration of physical and climatic conditions promoting the general well-being of the people.
- 4. The need for ensuring progressively increasing supplies of grazing, small wood for agricultural implements and in particular of firewood to release the cattle dung for manure to step up food production.
- 5. The need for sustained supply of timber and other forest produce required for defence, communication and industry.
- 6. The need for the realisation of the maximum annual revenue in perpetuity consistent with the fulfilment of the needs enumerated above.

Thus the 1952 Policy Resolution emphasised ecological and social aspects of forestry and gave only secondary importance to the needs of commerce and industry as also for revenue. However, in actual paractice the concept of national interest and paramount needs was interpreted in a very narrow sense. The destruction of forests for the construction of roads even in the ecologically very sensitive areas like the Himalayan region,

building up of irrigation and hydro-electricity projects and big factories were all justified in the name of national interest while forest dwellers were discouraged from using forest, wherever and whenever possible.

# National Commission on Agriculture

The National Commission on Agriculture was the first to advocate commercialisation of forests at all costs and with disregard to the sustenance of Adivasis derived from the forests. The Commission's report on forestry is published as Part IX of Multi-Volume report. It is full of contracdictions and inconsistencies.

The commercial and anti-poor bias of the commission is evident everywhere in the report. According to the commission, 'Free supply of forest produce to the rural population and the rights and privileges have brought destruction to the forests and so it is necessary to reverse the process. The rural people have not contributed much towards the maintenance or regeneration of the forests. Having over exploited the resources, they cannot in all fairness expect that somebody else will take the trouble of providing them with forest produce.

The Commission recommended that the revised national forest policy of India should be based on important needs of the country.

It further recommended that functionally all forest lands should be classified into (i) protection forests (ii) production forests and (iii) social forests.

The Commission recommended strengthening legislation on forestry for effective implementation of forest policy and enactment of a revised All India Forest Act. The Draft Bill of the Indian Forest Act 1980 was mainly based on these recommendations of the National Commission on Agriculture.

The further developments for the Indian Forest Bill 1980 have been covered in the earlier part of this article.

# The Conservation of Forests and Natural Eco-Systems Act

They entire text of the latest bill entitled "The Conservation of Forests and Natural Eco-Systems Act" has been included in this book as Document No. 1

The articles in this book by Ramachandra Guha (Forestry Debate and Draft Forest Act), Ashish Kothari ("Forestry for whom?") and Sharad Kulkarni ("Proposed Forest Act: An Assessment") give the positive features and deficiencies of the proposed act. While Ramachandra Guha has done an excellent job of analyzing the bill from the sociological context provided by the competing claims and pressures of the four interest groups he has identified in the current debate on forestry, namely, wildlife conservationists, timber harvesters or industrialists, rural social activists and scientific foresters. Ashish Kothari has done an excellent job of analyzing the Bill in several specific aspects including the contradictory provisions of the Act in the area of people's participation.

In this draft bill, it is important to note that entire concept of Joint Forest Management (JFM) has been left out. The important June 1, '90 policy circular on JFM is not even mentioned. Further it states that there is no scope for people's participation in Reserve Forests, which is very contrary to what has been already achieved. For example, in West Bengal and Madhya Pradesh, JFM has been allowed in high forest areas (Reserved Forest Lands) and even in Protected Areas like the Siriska and Rathambore National Parks in Rajathan and Sunderbar Bioshpere JFM has been allowed and VFCs formed. It is importanant to point out this major lacunae in the new Draf Forest Bill and all effort must be made to include JFM in it.

We have also included the article "Forestry Debate: What we need to do" by Dr. Madhav Gadgil adopting from the article he wrote for the "Wasteland News" as to what should be the Indian response to the "Forestry Principles" stated in the Rio Conference.

Another important article included in this book is "Towards a Design of Countervailing People's Power in Forest Law and Administration: Agendum for Democratic Law-Making" by Dr. Upendra Baxi from the book: "Towards A New Forest Policy", The purpose is to look at the design rather than merely the details of the law. This is very much applicable to the new Draft Bill 1994 as it was to the Indian Forest Bill 1980 about which this article was written. As the author says: "There is no reason why after several decades of independence, we should tolerate the colonial approach to law-making and administration. The forest Bill, therefore, offers us all the best opportunity to insist that the laws be made as if people mattered. It is time that we asked for a balance of power, in the design of the law, between the rulers and the ruled. It is time that we insisted that the law recognised and facilitated people's power as a check on bureaucratic power." The specific eight suggestions the author has made have very much relevence to the present draft bill and hence we decided to include this article in the book.

#### People's Natural Resource Management Bill

Prof. Madhav Gadgil and P R Sheshagiri Rao of the Centre of Ecological Sciences, Indian Institute of Science, Bangalore presented the key features of this alternate bill to the Draft Forest Bill entitled "Discussion Draft of a People's Natural Resource Management Bill" at a workshop organized by the SPS under the auspices of FEVORD - K at CES, Bangalore on Sept 20, 1994. This Bill consists of 14 Chapters. The approach to Natural Resource Management is decentralized, democratic (People-oriented), sustainable, livelihood based and integrated as opposed to the centralized, bureaucratic, totally fragranted and commercial interest based approach of the Draft Forest Bill or for that matter, any present forest legislation. They have

worked out a well thought out detailed structures with helmet, settlement or Village level Resource Management Committee as the foundation on which the natural resource management of the entire country would be built through a bottom-up process. They have delineated fifteen principles on the basis of which the bill has been designed with incentives or rewards for good management and maintenance of high levels of biodiversity by the people and most powers are vested with the local (village) community.

In other words, the debate can go along two lines, namely, what should be the amendments to the present Draft Bill to make it more people-oriented or an entirely people-oriented alternate approach adopted by Prof. Gadgil and Shri. Sheshagiri Rao which is the ultimate goal, and provides a long term perspective in which the suggested changes or amendments can be looked at.

#### Forest Lands and Commercial / Industrial Interests.

Another issue that needs to be looked at seriously by the activists, scientists and concerned government officials is the move of the Ministry of Environment and Forests led by the Minister Kamalnath (MEF, GOI) to open up degraded lands for industrial and commercial interests. This will very seriously affect the future of our forests and lives of crores of people especially tribals and rural poor who are critically dependent on these forests for their very survival.

This move has attracted widespread protests from various parts of the country including Karnataka where we experienced the adverse impact of such project in the form of controversial joint sector company called Karnataka Pulp Wood Ltd (KPL) which has been described earlier in this article. The editorial in the *Times of India* (Document No.7 in this book) entitled "Corporate Greeting" and the article of Usha Rai from the *Indian Express* (article included in this book) have warned against such a retrograde move of the MEF, GOI.

An excellent article entitled "Missing the wood for the trees" by N.C. Saxena, Director of the Lal Bahadur Shastri National Academy of Administration included in the book gives the well thought out reasons against this retrograde move of the MEF, GOI. Various letters and Resolutions passed by organizations and people's movement are also included (as Document No.10) in this book.

There is need for a concerted action in this direction and the SPS with the help of similar-minded groups and individuals is forming National Committee for Protection of Common Land Resources (CLRs) under the chairmanship of Dr. K.Shivaram Karanth and Shri. Chandi Prasad Bhatt. This is basically to prevent the Government from making this wrong move. However, if Government goes ahead with it, the very good precedents set by the people's movement against KPL in Karnataka (eg. The Supreme Court final order dt. 26-3-92 and the Karnataka Govt. order dt. 24-10-91) can be effectively utilized by concerned groups elsewhere in the country.

Finally, for our debate on Forestry, the prudent use of the natural resources for our needs as advocated by M.K. Gandhi ('there is enough on the earth for everyone's need but not for greed') and the social justice, as stated by Barry Commoner in the following words, have to be the guiding principles.

"When any environmental issue is probed to its orgins, it reveals an inescapable truth - that the root cause of the crisis is not to be found in how men interact with nature, but in how they interact with each other; that to solve the environmental crisis we must solve the problem of poverty, racial injustice and war; that the debt to nature which is the measure of the environmental crisis, cannot be paid, person by person, in recycled bottles or ecological sound habits, but in the ancient coin of social justice.



# Madhav Gadgil\*

# FORESTRY DEBATE: What we need to do\*\*

India's green mantle along with its heritage of biodiversity is undoubtedly in grave trouble today. While the Forest Conservation Act 1980 has largely halted the process of alienation of land from control by the Forest Departments of the various States and Union Territories, that has not put a halt to the attrition of the country's vegetation cover. This is a consequence of the whole social system of use of forest resources that was developed during the colonial times and that has been further elaborated during the drive for in Industrialization following independence. This system forces India's large rural population to meet their subsistence biomass needs from protected forests revenue wastelands or other categories of public lands as open access property resources. Consequently nobody is responsible for good management of this resource base that continues to suffer the tragedy of the commons. Even the forest lands under control of tribal councils in the north eastern States are subject to exhaustive use as the tribal leaders newly entering the market economy and the cutthroat market economy and the cut throat marketplace of politics are hungry for quick cash incomes.

The State-controlled reserve forests are faring no better. While in theory the State machinery should be motivated to use this resource base sustainably in long-term national interests, in

\*\* Wasteland News Nov 92-Jan93

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practice these resources have been liquidated to ensure quick, large profits to commercial interests. Indeed the State policies of encouraging industrialization in every way have been distorted to imply that industry should be subsidized to incredibly high levels. Forest resources have therefore, been made available to the industry at throwaway prices-as extreme as the supply of bamboo to paper industry in Kerala for as little as Re.11 per tonne while in open market basket weavers were paying over Rs.12,000 pertonne.

Given these high levels of subsidies, the industry has been tempted to adapt a strategy of making quick profits and then getting out. Indeed a manager of a plywood mill once told me that they were in the business of growing money, making plywood wa only a temporary device before they may turn to something else The industry has therefore been responsible for rapid exhaustiv use of resources of reserve forest. This Whole process provide little benefits to the local inhabitants, so they too have no stake in prudent management of reserve forests. They extend littl co-operation to forest departments; rather they may even support criminals like the notorious forest smuggler Veerappan operating on the Karnataka-Tamilnadu border. Hence, their legal and often illegal activities further contribute to th depletion of fores resources. In effect, no segment of the Indian society today i motivated to sustainably use, let alone replenish India's wealth of tree cover.

But this is only one side of the picture. India is a vibrant democracy in which there are built in India is a vibrant democracy in which there are built in corrective processes which are already triggering many positive measures to overcome these problems Beginning in late 1970's, these gathered considerable momentum in the 1980's, These include:

- (a) Starting with the fifth five year Plan of (1975-80), it is compulsory for all major development projects to carefully prepare an Environmental Impact statement and to provide for compensatory afforestation in the event of loss of any forest cover.
- (b) The Forest Conservation Act 1980 prescribes that no land should be alienated from control by forest department without the consent of the Central Government. This has largely halted all such alienation. This is why the official statistics indicates an essential halt to that process of deforestation. While, m unfortunately, this is not entirely true the Act has definitely made a positive contribution towards decelerating the processes of deforestation.
- (c) Beginning in the late 1970's the absurdly high levels of subsidies enjoyed by the forest-based industry have been gradually reduced. thereby helping to motivate the industry to use the resources more carefully. Thus in Karnataka the supply rate for bamboo for paper mills has been hiked from Re. 1per tonne, although this is still well below the market price.
- (d) Beginning in the 1970's the farmers have been encouraged to tree crop production and many industries and farmers have developed healthy links for fulfilling the needs of fortest-based industries.
- Committees of West Bengal, local tribals and villagers are being given and economic stake in the wellbeing of local forest resources. The response has been most encouraging. A major step has been taken in extending such system to other States through a circular of the Ministry of Environment and Forests, Government of India, in June 1990. Motivated by this circular many State governments including West Bengal, Harvana and Gujarat have initiated measures to create village community based management systems

for involving the local people positively in sustainable use and restoration of the local forest resources.

- and mid-1980's with Karnataka many State governments are decentralising political decision-making. The village and district level political authorities that have thus been created are far more motivated to ensure prudent use of local resources- including forest resources. Other States are expected to follow suit in decentralisation of power creating more favourable conditions for better management o forest resources.
- (g) The National Wastelands Development Board created in 1985 has taken new initiates in decentralising integrated planning of the use of natural resources and is spearheading efforts at restoring the vegetation cover of vast stretches of degraded lands degraded lands by meaningfully involving the local people.
- (h) The amended National Forest Policy, 1988 is a major step in recognising the primacy of the need to fulfill the subsistence requirements of local people.

What is now needed as an appropriate response to Rice Forestry Principles is to take this process further and implement it more vigorously at the ground level. A comprehensive package of policies to accomplish this has been spelt out in Tables 1a,b,c, These policies aim at;

(a) Transferring in phases all wood production for commercial purposes to privately owned lands. India has some 150 million has of land under cultivation, but the bulk of food production comes from some 20 million has of intensive agriculture in Punjab Haryana, western Uttar Pradesh and Andhra Pradesh. A good proportion of these 150 million has is hilly terrain or land in tracted of low uncertain rainfall that would be far better put under tree cover. The experience of tree production on such land is that it is

far more efficient than tree production on Government controlled forest lands. Thus in KArnataka the annual productivities of Government eucalyptus plantations are as low as 1.5 to 2 tonnes / ha; those on private lands are 10 to 15 tonnes / ha. At these levels only about would be adequate to meet the total commercial timber needs of less than 30 million tonnes per year of the country. By eliminating the need for any wood harvesting from 60 million ha of reserve forest lands, whose current average productivity is just 0.5 tonnes / ha this switch would permit very substantial build up of tree cover on the State-owned reserve forest lands. Even while generating wood for commercial purposes on private lands, it would be possible to use promising species like bamboo which can yield large, sustained production of excellent raw material for paper and polyfibre industries without clear cutting the stands.

- (b) The subsistence biomass needs of tribal and rural population could be met from a network of community land such as hamlets with 50 to 100 households. These user groups needs to be properly empowered and helped to establish regimes of replenishment and sustainable use over small, specifically assigned pieces of public lands drawn from revenue wastelands, protected forests and reserve forests. Such community lands would develop a vegetative cover of a diversity of species which would be harvested in the traditional mode that involves use of leaf and branch loppings, fallen and dead wood, grass and fruit collection, but no tree felling. A very substantial tree cover could be built up on some 10 to 20 million ha of lands under such a management regime.
- (c) The remaining 50 to 60 million ha of reserve forest lands should be brought under a regime of production restricted to non-wood forest produce of commercial value.

The diverse tropical forest cover of India is exceedingly rich in species vielding such produce; in some cases as with leaves of

Diospyros used for making country cigarettes or beedis the revenue accruing to the State far exceeds timber revenue from the same localities. Today these nonwood forest produce are managed poorly; collected by auctioning of rights to contractors who have no stake in long term sustenance of the produce and who pay local tribals and villagers extremely low rates for collecting the produce. We need firstly to systematically encourage and enrich the bulk of India's forest tracts by species that yield such non-wood-forest-produce. Secondly we also need to create management systems that will generate a genuine economic stake for local inhabitants in ensuring that forest stocks do get replenished by such species and that they harvests process and market the produce. This is certainly feasible, and when implemented would lead to very large gains in terms of sequestration of carbon in enhanced tree growth.

A serious commitment to the Rio Forestry Principles would call for a wide range of actions by many different people and organisations. These actions would entail new policy initiatives, building up of institutions, redeployment of resources, generation and application of technologies, scientific research, training and spread of awareness. Such actions would need to be imitated by the national and local government, by the industry (including transnational corporations), by the scientific community, by the rural elite and the poorer sections of the rural community, and by the voluntary sectors. Actions also need to be initiated at the international level by agencies like UNESCO and IUCN, by international financial institutions like IMF and World Bank. Summarised below are a series of such people- oriented and environment-friendly action points.

# (i) State apparatus

(a) Policy: Devolution of power down to the level of local user groups in tribal and village hamlets; reduction in the powers

of bureaucratic machinery rendering them publicly accountable down to the local level; scrapping Official Secrets Acc and facilitating free flow of information; elimination of subsidised supply of natural resources to the urban-industrial intensive agriculture sector.

- (b) Institutions: Mechanisms for public discussion of environmental consequences of actions being contemplated by the State and the corporate sector, mechanisms for redressal of effects of environmental degradation suffered by citizens, mechanisms for involving local user groups in management of natural resources, mechanisms for financially and otherwise rewarding local user groups for conserving biodiversity, mechanisms for ensuring free flow of information regarding all actions by corporate and State sectors impinging on the environment.
- (c) Resources: A cutbact in the resources being consumed in providing subsidies to the elite and by the bureaucratic apparatus especially in a regulatory functional; making these resources available on a more decentralised and accountable fashion to groups down to the level of local user groups.
- (d) Technologies: Promote technologies relating to conservation of natural resources, sustainable utilisation of wide diversity of biological resources.
- (e) Research: Decentralised monitoring of the status of environment, incorporating folk knowledge of ecology in environmental management, social institutions promoting sustainable use and conservation of hiodiversity.
- (f) Training: Exposure of political, bureaucratic, scientific, voluntary sector personnel to social and technical assures concerning sustainable use and conservation of biodiversity.
- (g) Awareness; Overall social awareness of issues relating to sustainable use and conservation of biodiversity.

## (ii) Industry

- (a) Policy: Willingness to pay true costs of use of natura resources, emphasis on reliance on environment friendly technologies.
- (b) Institutions: Internal mechanisms to monitor environmental impacts of industrial activities, mechanisms for communicating environmental measures adapted society at large
- (c) Resources: Redeploy resources to develop environmentally friendly technologies.
- (d) Technologies: Focus on developing environmentally friendly technologies.
- (e) Research: Developing environment friendly technologies.
- (f) Training: Exposure of business leaders and employees to social and technical issues of how the industry impinges or natural resources/biodiversity.
- (g) Awareness: Employ a part of industry's resources to spread awareness of environmental issues.

## (iii) Scientific community

- (a) Policy: emphasise the value of work on indigenous, locality specific problems relating to natural environment, involve a large cross section of scientific community in work on natural environment, recognise the value of folk knowledge of ecology.
- (b) Institutions: Build up decentralised banks of environmental data, perhaps in undergraduate colleges in the different districts of the country; mechanisms to inject scientific inputs into a decentralised process of planning the use of natural resources.

- (c) Resources: Redeploy resources to foster widely dispersed research on locality specific problems relating to natural environment.
- (d) Technology: Develop technologies of managing and utilising locality specific environmental information to feed into a decentralised process of planning the use of natural resources.
- (e) Research: Promote research along lines suggested in policy prescriptions above.
- (f) Training: Train scientists from various basic disciplines to work on problems of natural resources.
- (g) Awareness: Design special programmes to spread awareness of environmental issues and opportunities for scientific research on environment from a variety of disciplinary backgrounds.

## (iv) Rural elite

- (a) Policy: Willingness to pay true costs of use of natural resources such as water, minerals; willingness to retain use of village common lands to meet subsistence requirements of rural poor.
- (b) Institutions: Village level user groups to plan, manage local natural resources, conserve local biodiversity with a greater weightage to the needs of rural poor.
- (c) Resources: Use resources of Zila Parishads and village panchayats to sustainably manage local natural resource base and conserve biodiversity.
- (d) Technologies: Promote use of environment friendly agricultural technologies including tree farming based on a diversity of species.

- (e) Research: Participate in research on developing environment friendly agricultural technologies as mentioned above.
- (f) Training: Training for farmers in environment friendly agricultural technologies.
- (g) Awareness: Expose rural elite to social and technical issues of sustainable use of natural resources and conservation of biodiversity.

#### (v) Rural Poor

- (a) Policy: Planning and management of local natural resource base and conservation of biodiversity should be made the responsibility of rural and tribal people dependent on this resource base of r their own well-being.
- (b) Institutions: Small scale,m socially and economically homogeneous groups of users to plan, manage and conserve local resources; higher level local governments to co-ordinate the resource use amongst different user groups.
- (c) Resources: Resources should flow to local user groups to reward them for good management of local resources/conservation of biodiversity.
- (d) Technologies: Local user groups should be involved in developing locality specific technologies of good management of natural resources/conservation of biodiversity.
- (e) Training: Provide training to local level user groups in sustainable management of natural resources/conservation of biodiversity.
- (f) Awareness: Using traditional media such as folk theatre to enhance the awareness of rural poor in value of their positive

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involvement in sutatinble management of patural resources/conservation of biodiversity.

# (vi) Voluntary agencies

- (a) Policy: Focus on working with local user groups in sustainable management of natural resources/conservation of biodiversity as a worthy activity.
- (b) Institutions: Participate in building up the strength of local user groups to plan and manage local resource base/conserve biodiversity, participate in developing decentralised environmental data bases.
- (c) Resources: Participate in bringing national/international resources to positively reward local user groups for good management of natural resources/conservation of biodiversity.
- (d) Technologies: Serve as a bridge between the scientific community and local user groups in developing technologies for sustainable use of natural resources/conservation of biodiversity.
- (e) Research: Participate in research on social institution appropriate for sustainable use of natural resources/conserving biodiversity as well as on talk knowledge of ecology.
- (f) Training: Organise training of voluntary agency workers to participate in tasks outlined above.
- (g) Awareness: Voluntary agencies should play a key role in spreading awareness of environmental/biodiversity issues in all strata of the society.

# (vii) International agencies

(a) Policy: Support fairer terms of trade for natural resources/biological resources from Third World countries support local level user groups to take good care of local resources and conserve biodiversity.

- (b) Institutions: Build institutions to tax nations proportional to their per capita demands on natural resources of the earth and to use these funds to provide incentives for local user groups to conserve biodiversity.
- (c) Resources: Generate resources by taxing nations proportional to their per capita demands on natural resources of the earth.
- (d) Technologies: Encourage development of widely dispersed location specific technologies which incorporate folk ecological knowledge to sustainably use local natural resource base/conserve biodiversity.
- (e) Research: Promote scientific research on complex natural systems, including processes involved in maintenance systems, including processes involved in maintenance of biodiversity on a widely dispersed basis throughout the world; promote human ecological research on society-biodiversity interaction.
- (f) Training: Promote training on a widely dispersed basis throughout the world to generate knowledge on the working of local ecological systems.
- (g) Awareness: Create awareness throughout the world on global environmental issues and responsibilities of people making the highest levels of demands on resources of the earth.

## Ashish Kothari\*

# FORESTS FOR WHOM?\*\* On The Proposed Conservation Act

One of British India's legacies is about to fall. The Indian Forest Act of 1927, much criticised for its emphasis on governmental control over forests, and for its encouragement of their commercial exploitation, may soon be replaced by an Act drafted by the Union Ministry of Environment and Forests. To be called the Conservation of Forests and Natural Ecosystems Act, it is currently circulating among State Governments for comments. The draft has not yet been made public; at least not officially. But, like all government documents, it too has leaked into the public domain. Very likely, it will soon become the centre of considerable controversy, for in some respects it appears to be even more colonial than its predecessor.

Forest policy and management since the time the British set up a Forest Department and enacted relevant legislation in the 19th century has been a subject of considerable debate and conflict. The colonial government attempted to take over as much forest land as possible, with the exception of some sensitive tribal areas as in the North-East. The stated assumption behind such a move was that local communities were incapable of 'scientific management', and that only a trained, centrally organised cadre of officers could properly manage forests. The not-so-hidden motive was commercial exploitation of the vast treasures that India's

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<sup>\*\*</sup> Frontline, August 12, 1994

forests offered, both for industrial use in Britain and for expanding the colonial infrastructure within India. In the process, at least two crucial aspects of forest management were ignored: the well-established traditional systems of conservation and sustainable use, and the critical ecological and social role that forests played.

Unfortunately, these aspects of forest policy persisted even after Independence, so that the Forest Department in many places has continued to behave as if forests must be saved from local communities (and for the urban industrial consumer), rather than with or by them. As a result, those very communities which had conserved forests for millennia have been alienated from them, their sense of belonging has been snatched away, so that they no longer have a stake in conservation. Simultaneously, the dictates of an industrial and consumerist economy and of political exigencies have resulted in considerable clear-felling of forests, or their conversion into monoculture plantations. The occasional brave forest officer has undoubtedly been able to stem the tide of destruction, as witnessed by the continued existence of some relatively intact reserved forests, national parks, and sanctuaries, But overall in the country, the heady recipe of Central bureaucrat management, alienation of local communities, commercial exploitation, and increasing people's demands, has resulted in a loss of perhaps over half of India's natural forests.

Latest satellite imagery shows that over 19 per cent of India's landmass is covered by forests, but the same imagery also shows that less than 12 per cent is dense cover; what it completely fails to show is that a considerable portion of even the dense cover is either monoculture plantation (from the air, a rubber plantation looks like a good forest!), or devoid of the rich ground vegetation that it once had. In other words, very little of India's land today retains good natural forest.

The fact that lack of people's genuine involvement in forest management was one root cause of this grim situation appeared to have been recognised in the last decade or so. An increasing number of states have been experimenting with joint forest management. Large forest areas have come under the control of village forest protection committees (consisting of local people and Forest Department officials), and the Central Government has itself issued a circular asking all State Governments to initiate measures to involve people. Simultaneously, citizens' movements in many parts of India have in no uncertain terms protested the lack of ecological and social concerns in official forest management schemes, and managed to save many a forest from commercial exploitation; groups like the Chipko and the Kashtakari Sanghtana have even reestablished full local control over forests to conserve and use them for local needs.

A clear signal has therefore gone out in the last decade: if forests are to survive in India, they must be managed in a way that does not impair their crucial ecological and social function, and allows local people an equal voice.

One would have thought these lessons would have been learnt by those drafting the new forest legislation. Unfortunately, the proposed Act is only a partial recognition of the paramount need to conserve forests, and is even more insensitive to the issue of people's participation than its predecessor.

# PRO-CONSERVATION THRUST

The proposed Act attempts to ensure conservation through a series of measures, most important of which is the declaration of reserve forests which are to be stringently protected. A welcome change is that extraction of industrial raw material from forests is to be subject to grater reviews, with permission having to be taken from the Central Government. Regularisation of encroachments on forest lands (the Union Environment Minister recently allowed this over nearly 30,000 hectares in Kerala) is to be disallowed, except

when the Central Government obtains the consent of both Houses of Parliament for such regularisation. The Centre is given the power to direct States to declare reserve forests, and to stop exploitation within them. For urban areas, there is a proposal to create tree authorities and impose severe limitations on tree-felling even on private lands.

These and several other provisions in fact give the Union Government a far grater role than is now the case, a point which is sure to draw flak from State Government, and further divide ecologists who are unable to reach a consensus on how much relative control State and Central governments should have. To assist the Centre, the Act provides for the setting up of a forest policy and law monitoring committee, which has both official and non-official members.

Another interesting provision relates to the levying of a tax on timber and other forest produce being used for commercial purposes. The money generated by this is to go into a special fund at the state level, to be used only for protection of forests, and for the welfare of forest dwellers. This is certainly welcome if it forces industry and urban consumers to pay the real value of forest produce, and returns some of the profits back to forests and their inhabitants.

### CONSERVATION WITHOUT EMPOWERMENT

It is in the area of people's participation, however, that the proposed Act fails to make any significant headway, and indeed may be seen as retrogressive. There is a substantially expanded chapter on village forests, which allows for control over such forests by local bodies, and which appears to give the proposed Act a much greater orientation towards involving people. However, this is somewhat deceptive, given the other provisions of the Act.

The ownership and control of reserve and protected forests remains vested in the Government, which has the full power to do as it wishes with them. Reserve forests cannot be converted into village forests at all, a restriction which is not present even in the 1927 Act. On the other hand, village forests can be converted into reserve forests if the government so desires. While protected forests can be converted into village forests, the government will retain the proprietary rights it may already have over them. In effect, not many of India's forests are likely to become village forests at all.

Other provisions are also likely to raise the hackles of forest-dwellers. Local community and individual rights in forests can now be annulled if the relevant forest officer feels these rights are beyond the "carrying capacity" of the area. This notion of carrying capacity is a notoriously difficult one to apply in the field, and, having left it undefined, the proposed Act is giving vast discretionary and arbitrary powers to the Forest Department. In the case of shifting cultivation too, the government can decide whether to allow it or not, without so much as consulting the cultivators.

Another clause states that it villagers are beneficiaries of rights in a village forest, their rights in reserve or protected forests can be annulled; this ignores the fact that the former may simply not be enough for meeting local requirements. Also controversial will be the power the Act confers on forest officials to arrest, without orders or warrants, any person suspected if committing an offence.

One of the unstated assumptions of the proposed Act, a legacy of colonialism, is that the Government is more capable of managing forests than are local communities. For instance, one provision allows the Government to take over village forests if the local managing body is found incapable of protecting it or

following the prescribed management plan, but there is no provision for people taking over reserve or protected forests which the Government is mismanaging. Similarly, while the Government will have a role in prescribing management plans for village forests, no such role is envisaged for the people in the case of government-owned forests.

#### WHAT SHOULD BE DONE

Given the above provisions of the proposed Act, it is going to encounter stiff resistance from tribal and other forest-dependent communities, human rights oganisations and sensitive environmental activists all over India. A previous draft, circulated in the early 1980s, was withdrawn by the Government even before introducing it in parliament, owing to such opposition. Should this one, too, be thrown out?

Perhaps not. There is certainly a need for a new Act which can help to conserve the remaining forests. The proposed Act goes a certain distance in this direction. It is its miserable failure to integrate the flip side of the conservation coin, people's empowerment, which must be opposed. To that end, a number of groups are gearing up not only to criticize the draft but also to suggest concrete alternatives.

What should the thrust of an alternative draft be? Perhaps most important, as a starting point, is that it should enable the classification of forests into different human use intensities, so that areas critical for conservation can be well-conserved, but also so that forest are earmarked or meeting the survival needs of local populations. Towards this, the conventional categorisation into reserve, protected, and village forests may need some modification. But what is vital is that the decision of which forests to classify how, what activities to allow in each category, and other such decisions must be taken not by the Government alone but through a consultative process involving all parties concerned.

In other words, the declaration, management, and monitoring of not just village forests but also reserve and protected forests must involve local communities as equal parties. The preparation of management plans for such areas should show how the twin objectives of conservation and ensuring local needs are sought to be met. Decisions on the continuation of local rights, especially those which meet bonafide domestic requirements, must be reached only with the full informed consent of the right holders, and where such discontinuation is to take place, viable alternatives must first be provided.

Several other provisions are needed to ensure a participatory process of forest management. No only the consent of the Central Government, but also that of the local community must be taken before industrial extraction of forest produce is allowed. As a welcome step, the tree authority which is proposed for urban and rural areas has some non-official members, but their inclusion is left to the discretion of the government. It should be compulsory, and should specify that local non-governmental bodies with a proven record in conservation should be preferred.

Similarly, the proposed forest policy and law monitoring committee at the Centre has skewed ratio of 10 Governmental members to three non-officials; this should be revised to 5:5. As a very important steep, the Act must provide locus standi to citizens, to approach the court independently against any offender; such a right is now given to citizens in most environmental legislation, and it would be retrograde to deny it here.

# CURBING INDUSTRIAL-URBAN DESTRUCTION

Though the proposed Act does put greater restrictions on industrial use of forests than is currently the case, it does not go far enough. Given the extent of destruction which our forests have already suffered, it is about time that commercial pressures were

phased out of natural forest areas. Thus, for instance, the new Act should:

- 1. Completely prohibit commercial logging in natural forests, after a stipulated period of phasing out;
- 2. Immediately stop all commercial activities in forest areas on slopes above 30 degrees gradient (as stipulated for shifting cultivation);
- 3. Subject all other commercial activities in lesser slopes, during the period of phasing out, to the yardsticks of biodiversity conservation, sustainability, maintenance of ecosystem value, and meeting local community needs; and
- 4. Subject all cases of large-scale (the dimensions can be defined) diversion of forests to the requirement of/clearance from both houses of parliament (as stipulated for regularisation of croachments).

Incidentally, the draft provides for prohibiting the establishment of private sawmills in sensitive areas, but exempts the Government from setting up such units. Given the blatantly exploitative attitude of several State Governments, such a clause should be dropped. It is also about time that the infamous indemnity clause which protects government officials acting in "good faith" was reviewed, since officials are as prone to violating the provisions of an Act as are members of the general public.

One, final point relates to the scope of the proposed Act itself. It is unclear why it attempts to cover not just forests but also all natural ecosystems. The latter would include, as per the definition given in the draft, both terrestrial and aquatic ecosystems: forests, grasslands, wetlands, coral reefs. If indeed it is the intention of the government to conserve and sustainably utilise all such ecosystems, then the provisions will have to be greatly expanded, since the draft mostly deals with forests.

Thus, for instance, wetlands require special treatment, and provisions which are quite different from those dealing with forests (for example, against draining, pollution, and so on, or dealing with sustainable fisheries). Also, the administrative structure currently dealing with wetlands is usually not the Forest Department, so this aspect too will need to be looked into. It may simply be better to exclude other ecosystems altogether from this Act and leave their conservation and management to other law, including a comprehensive biodiversity conversation Act which is currently being drafted.

Forests cannot be saved by centralised bureaucracies. Control over natural resources must devolve from Central and State Governments to local communities, or as joint control systems where such communities have come fragmented or corrupted by outside market forces. Simultaneously, it is time we assigned conservation and local sustenance as the twin priorities of forest management, with urban-industrial demands a distant third. If the new Act facilitates such control and management, it will be welcome; if not, it will be opposed as another piece of colonial legacy.



## Sharad Kulkarni\*

# PROPOSED FOREST ACT: An Assessment\*\*

In 1980, the Central Government had circulated a draft of the proposed Indian Forest Act that was harshly criticised for its anti-adivasi and anti-people approach. The government took notice of this opposition to the bill and it was not introduced in the parliament. Later, in 1985, the department of forest was transferred from the ministry of agriculture to the newly constituted ministry of environment and forests. It was the ministry of environment and forests that drafted the National Forest Policy Resolution approved by the parliament in December 1988.

### NATIONAL FOREST POLICY RESOLUTION, 1988

It was categorically stated in the resolution that the principal aim of the forest policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for the sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

The policy statement asserted that the existing forests and forest lands should be fully protected and their productivity improved, so as to continue to provide sustenance to tribal population. The national goal should be to have a minimum of

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<sup>\*\*</sup> Economic and Political Weekly, July 23, 1994, Vol.XXIX No.30.

one-third of the total area in the country under forest or tree cover. A massive need-based and time-bound programme of afforestation and tree-planting should be undertaken. It was stated that the life of tribals and other poor people living within and near forests revolves around forests and the rights and concessions enjoyed by them should be fully protected.

The resolution had a special article on tribal people and forests. It was stated that having regard to the symbiotic relationship between the tribal people and the forests, all agencies responsible for forest management should see that the tribal people are closely associated in the protection, regeneration and development of forests so as to provide them gainful employment. Efforts should be made to contain shifting cultivation. The practice of providing forest produce at subsidized prices to industries should be discouraged.

Thus the new forest policy resolution made a departure from the commercially oriented, bureaucratic management practices.

# FOREST (CONSERVATION) ACTS, 1980 AND 1988

After the inclusion of forests in the Concurrent List through the 42nd Amendment to the Constitution in 1976, the government issued the Forest (Conservation) Ordinance on October 25, 1980 prohibiting the state governments from allowing the use of forest lands for any purpose without the approval of the central government. The ordinance was later passed into an Act (No 69 of 1980).

But somehow, the government was not satisfied with the powers conferred on it under the Act of 1980 and tried to increase these with the Forest (Conservation) Amendment Act of 1988. The amendment forbade the state governments to assign by way of lease or otherwise any forest land or any portion thereof, to any

private person or to any authority, corporation or agency of any other organisation not owned, managed or controlled by government, without previous sanction of the central government.

## Conservation of Forests and Natural Ecosystems Bill

After the adoption of the natural forest policy resolution, it became necessary to remove the wide disparity between the approach of the resolution and that of the prevailing legislation. The law in force was and is still the Indian Forest Act of 1927 as amended by different State Governments from time to time. The act was meant to consolidate the law relating to forests, the transit of forest produce, and the duty leviable on timber and other forest produce thus to tighten the control of the government over forests. The national forest policy resolution of 1988 had accepted environmental stability and maintenance of ecological balance as the principal aim of forest policy. The government has now come up with a draft forest bill to remove the contradictions between policy and legislation.

Preamble: The preamble to the proposed conservation of Forests and Natural Ecosystems Act states that it would "provide for the resolution, conservation and management of forests and natural ecosystems and matters connected therewith and incidental thereto". It is further added that "it is imperative and expedient to conserve forests and natural ecosystems to ensure environmental well-being and stability, preserve natural heritage, argument and safeguard bio-diversity and fulfill the basic needs of the people on the principles of sound ecological management and optimum bio-mass production on a long term basis, as well as to revive and restore degraded forests and natural ecosystems".

Usufruct Rights: The bill is divided into 14 chapters. Chapter one gives definitions of the terms used in it. Since 1990, the government has been encouraging joint management of forests, giving usufruct rights to those who protect forests. It has,

therefore, become necessary to define the term 'usufruct'. It has been defined as under "Usufructs means forest produce that may be obtained from dead plants, or the produce of or harvest from living plants including grasses, sedges, forbes, herbs, creepers, vines, shrubs and trees, without their uprooting, feeling, coppicing, pollarding or destroying, or otherwise debarking or damaging in such a manner so as to hamper or impair [their] natural growth or to threaten [their] survival" (section 1(29)).

Reserved forests: The second chapter lays down revisions relating to reserved forests. As in the Act of 1929, the state governments have been empowered to constitute reserved forests on any land which is the property of those governments or over which they have proprietary rights. In doing so, they have to follow the procedure laid down in the Act.

As mentioned earlier, forest is an item in the concurrent list. But the Central Government wants to have an upper hand in the management of the forests. With this intention, a provision not found in the 1927 Act has now been added. It provides that 'where the Central Government deems it essential and expedient to constitute a reserved forest, and where the State Government has not constituted such a forest, the Central Government may give directions to the state Government to constitute a reserved forest within a prescribed time and to follow the procedure laid down.... in this regard (section 3(2)).

Shifting Cultivation: In the Act of 1927 the State Governments were empowered to permit or prohibit the practice of shifting cultivation in reserved forests. However, it was specially mentioned that the practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restrictions and abolition by the State Government (section 10(5)). In the proposed Act, it is laid down that the State Governments can permit the practice of shifting cultivation for a period not exceeding three years by

which time the practice of shifting cultivation is to extinguished and alternatives to be improved for rehabilitating the families that may have been practising shifting cultivation are to be laid down(section 10(3)).

#### Claims Over Forest Land and Produce

The proposed Act contains a provision that may adversely affect the rights of forest dwelling communities over the forest. It is laid down that"in the case of a claim to pasturage or to forest produce, a right of way or a water course, the forest settlement officer shall pass an order admitting or rejecting the same, in whole or in part, after considering the viewpoint of presenting officer, or of the divisional forest officer" (section 12). In the Act of 1927, only a claim to right the pasture or to forest produce was mentioned (section 12). The inclusion of a right way or a water course is bounded to create disputes and clashes. This can be avoided if this provision is deleted.

There is another provision in the proposed Act that is likely to lead to conflicts between the people and the Forest Department. It is provided that "The forest settlement officer shall not, except with the prior approval of the State Government, admit claims to pasturage or to forest produce in the proposed reserved forest: (1) If the claimant is a person of a village or town which does not have contiguous boundary with such a forest or (2) The claim is a beneficiary of any village forest or part thereof so constituted under chapter IV of this Act" (section 15(3)). The provision that the claimant should be a person residing in a village or town with contiguous boundary with the forest is reasonable. However, the provision that the claimant should not be a beneficiary of any village forest does not make any sense. During certain seasons, a majority of the approximately four million persons collect some forest produce from the village forest. These persons should not

be deprived of this right over non-wood forest produce in the reserved forests.

Encroachments: Special provisions have been made to prevent encroachments on lands in the reserved torests. The forest officers are empowered to confiscate the crops on the encroached lands.

De-Reservation: The power to de-reserve reserved forest or to part thereof was given to the State Governments in the Indian Forest Act of 1927 (section 27). However, the Forest (Conservation) Act of 1980 withdraw this power and laid down that not withstanding anything contained in any other law for the time being in force in a state, no State Government or any other authority shall make, except with prior approval of the Central Government, any order directing that any reserved forest (within the meaning of the expression 'reserved forest' in any law for the time being in force in that state) or any portion thereof shall cease to be reserved". This restriction is made more strict in the proposed Act It is laid down that "the State Government may, by notification in the official gazette, direct that from a date fixed by such notification any land or any portion thereof reserved under this Act shall cease to be a reserved forest, provided that no such notification shall be issued unless a clearance has been obtained from the Central Government or any officer so empowered by the Central Government in this behalf; provided further that no such clearance shall be granted by or on behalf of the Central Government for regularisation of unauthorised occupation of any reserved forest or portion thereof, if such occupation is of a period after coming into force of this Act, without resolution to that effect being passed by both the houses of parliament" (Section 27(1)).

The supremacy of the central government over state governments has been made quite explicit by a special provision in the Act relating to reserved forests. It has already been

mentioned that the central government is empowered to give directions to the state governments to constitute reserved forests within a prescribed time over certain forest land or any land which is the property of the state governments (Section 3(2)). It has further been provided in the proposed Act that if the direction to the state government under the said section has not been implemented by the state government, the central government may direct the stoppage of all exploitation by the state governments of the area in question till such time as the directions of the central government are carried out. Anyone who violates such directions or abides in the violation of the same shall be liable for punishment as mentioned in Section 78 (Section 27(A)). This and similar such provisions may exacerbate the conflicts between the central government and the state governments.

#### **Protected Forests**

Chapter three is related to matters connected with protected forests. In the Act of 1927, there was no provision to declare a protected forest to be not protected. However, such a power was presumed and was exercised by the state governments from time to time. In the proposed Act, strict provisions have been made to declare protected forest as no more protected. It is provided that "the state government may, by notification in the official gazette, direct that from a date fixed by such notification, any land or any portion thereof protected under this Act shall cease to be a protected forest, provided that, no such notification shall be issued unless a clearance has been obtained from the central government or any officer so empowered by the central government in this behalf; provided further that no such clearance shall be granted by or on behalf of the central government for regularisation of unauthorised occupation of any protected forest or portion thereof, if such occupation is of a period after coming into that effect being passed by both the houses of parliament" (Section 34(1)).

The provision is very complicated and would obstruct the execution of development projects covered under protected forests.

## Village Forest

The three fold classification of forests, viz, reserved, protected and village forest, in the Act of 1927 has been followed in the proposed Act. However, village forests were given little importance in the Act of 1927 (Section 28). In the proposed Act, there are several provisions relating to village forests. National Forest Policy Resolution has emphasised people's participation in forest conservation and management. The government of India is encouraging the practice of joint forest management. It is, therefore, natural that these ideas should find place in the proposed Act. Provisions relating to village forests are quite important from the point of view of adivasi and other forest dwelling communities and need a close scrutiny.

Under the proposed Act, state governments are empowered to constitute village forest over any land (except land under reserve forest) over which it has proprietary rights or any land at the disposal of the village community or to which the village community has access by way of any right, concession or privilege, with a view to conserve or develop such land or to manage it on the principles of sustained bio-mass production for the collective benefit of the said village community.

Village forests are to be managed through the village community and guidelines for such management have been laid down in the proposed Act. Before constituting a village forest, an authorised officer of the State Government shall ascertain the extent and nature of the rights of government or of private persons or of villagers other that the village to whom the said forest is to be entrusted for management. The village shall be represented by its panchyat or any other local body representing the village. These rights should be extinguished, or, where this is not possible, two

or more villages should mutually agree to share the usufructuary rights, before the notification of the village forest is made, subject to the rights of individuals, the government or any other village. The village concerned shall enjoy the usufructs, fuel-wood and other rights and privileges in accordance with a management plan prepared by the local body in consultation with the designated representatives of the forest department. The management plans shall also prescribe the duties of the villages in matters relating to the protection and management of such forests.

The village community, individually and the local body collectively shall restrict the usage of the village forests to the extent and nature provided for in the management plan. The management plan shall also recognize the usufructuary rights, including those over grass and fuel-wood, of any individual of the community who has been responsible for the raising and the protection of the specific forest produce. It is clearly stated that the proprietary rights of the State Government shall be protected. The local body has been empowered to levy a compensation, not exceeding Rs. 3,000 on any person who violates the rules laid down for the maintenance of village forests.

Ultimately, the power of control over the village forests will be in the hands of the State Government. It is laid down that where the State Government or its authorised officer is satisfied that the local body or the residents of the village are either unable to protect the village forest or to abide by the prescribed management plan, the State Government or the authorised officer may pass an order taking over the management of the forest after giving the villagers or the local body an opportunity to present their case.

The local body is supposed to undertake certain functions. It is laid down that "the local body shall (1) as far as possible, afforest all land under its charge and embarkments of roads,

canals, railway lines, tanks and the like; (2) regulate the grazing of cattle on such land under afforestation for such period and in the manner deemed fit and shall make every possible effort to improve such land by reseeding of grasses, planting offodder or in any other appropriate manner; (3) encourage plantation of trees and groves on the private landholdings by the respective owners and raise nurseries to provide seedlings and their planting material for the same, on such terms as may be deemed fit" (Section 34 AA2).

There is also a provision empowering the local body to assign a part of the village forest or the land under its charge to individuals for afforestation and protection on mutually agreed terms and conditions including enjoyment of usufructs and other forest produce. It is recommended that in such allotment, preference should be given to the landless, marginal land small farmers of the village in that order. If the Individual to whom such land is allotted uses that land for any purpose other than afforestation and cultivation of grass and fodder, he shall be summarily evicted and shall also be liable to punishment. The proposed Act empowers the local bodies to levy a special tax to provide funds for protection and development of village forest and community lands, and for afforestation and grass and fodder development on private holdings. This power is likely to be misused to the advantage of the rural powerful and the rich in the villages.

Village Forest Development Fund: The bill provides that" the State Governments shall establish a special fund called the Village Forest Development Fund and shall contribute to such fund annually an amount which shall not be less than 5 per cent of the gross revenue of the forest department of the state and 25 per cent of the forest development tax to be levied under the provisions of this Act". The State Government can, from the village forest development fund, advance loans to the local bodies

managing village forests for afforestation and development of such village forests. The loans so advanced shall be recovered from the local body from the revenge received through the sale of forest produce harvested from the village forest. The above mentioned provision that makes a mockery of all these pious proclamations. This provision says that the State Government may declare all or any of the provisions of chapter three relating to protected forests to be applicable to village forests. Thus it can declare any village forests as protected forests keeping the sword of Damocles hanging over the local body managing a village forest (Section 34, AA4).

We mentioned earlier that the government can constitute a village forest on any land except the land under the reserved forests. There is a possibility that some of the degraded lands under protected forests will be transferred to constitute village forests. There is a special provision for such lands transferred from protected forest to village forest. It says that wherever the village forest has been created out of any protected forest, all the provisions of chapter three (relating to protected forest) shall apply a priori to such village forest or part thereof (Section 34, A(a)4). This provision nullifies all the concessions given for the development of village forests. This is not joint forest management but a subservient assignment.

Forest on Non-Government Lands: There were some provisions in the Act of 1927 to control forests over lands that were not the property of government. There are numerous elaborate provisions in the proposed Act to regulate and control what may be called private forests. The state governments have been authorised to prevent activities like breaking up or clearing of land for cultivation and tree felling for certain purposes after giving an opportunity to the person concerned to present his case. If the person concerned fails to comply with the directions given by the State Government, it can take over management of such foresters or natural ecosystems. During the period of management the State

Government shall receive all the revenues from the working and management, can terminate such management and hand over possession to the original owner.

A provision is made for the protection of forests or natural ecosystems on the request of their owner(s). Such a provision is made for the first time in the forest legislation.

#### Tree Grower

Another very peculiar provision is further registration of tree grower. It is provided that any owner may register himself as a tree grower with the divisional forest officer in respect of such land on which he has raised plantations in the manner prescribed by the State Government. The State Government may prescribe certain criteria for eligibility for registration like minimum number of trees, minimum area of plantation or both. Any registered tree grower may use as he likes the forest produce on his plantation and may fell the trees with prior permission of the authority in case such permission is necessary. If such permission is not granted within 60 days of the receipt of intimation, it shall be deemed as granted. The registered tree grower can request for permit to transport the forest produce from his plantation to some other place for processing or sale. The State Government can extend facilities and technical advice to the registered tree grower. The divisional forest officer can cancel such registration after recording reasons in writing and giving the tree grower an opportunity of being heard. All these provisions are basically for raising plantations by the companies and firms. It is already provided in the definition that persons include a firm or a company. It is already provided in the definition that persons include a firm or a company. Thus companies are assured that if they are registered as tree growers, they will be eligible to obtain permits for felling of transport.

Tree growers acquire a unique exemption under the provisions of the proposed Act. It lays down that notwithstanding

anything contained in any other law for the time being in force, any land which is utilised by the owner for the purpose of tree growing or raising grass and other fodder shall be deemed to be plantation forest and shall not be included in agricultural landholding for the purpose of celling laws (Section 38D). This exemption is available to only registered tree growers and not for plantation of horticultural species like tea, coffee, plam and rubber. In the draft of the national forest policy resolution circulated in 1987, there was a provision that exemption from the existing land ceiling laws should be given to new plantations on degraded lands outside the forest (Section 4(9)). This was dropped when the resolution was presented to the parliament. This provision is now brought back for registered tree growers. This may encourage individuals and companies to evade land ceiling laws and will again give rise to the ownership of big landholdings by individuals and especially companies.

Plantation on Private Lands: The proposed Act contains some provisions to assist the owners for raising plantations on their lands. As pointed out earlier, the owner may be a person, a firm or a company. An owner can request for assistance after giving details of the land to be bought under plantation, species to be planted and other related information. After due investigation, the divisional forest officer can offer to provide requisite financial or other assistance including planting material on mutually agreed arms and conditions. The State Government may provide loans and subsidy for raising a plantation, its management and harvest and prescribe the method of recovery. The owner shall not alienate the land or the ownership of plantation except in the manner provided for in the agreement. The owner shall be entitled to the forest produce in accordance with the provisions in the agreement.

Assignment of government land to individuals for afforestation; The bill proposes to empower the State Government to assign government land to individuals for the purposes of

afforestation. However, the government cannot assign any land from reserved or protected forests. The procedure for such assignment can be the same as the assignment of village forest lands to individuals laid down in Section 34 AA. The assignee shall be entitled to usufruct from the plantation raised by him and also to the final harvest. The government can take back the assigned land if it finds that the terms and conditions of the assignment are violated.

Agro-Forests: It was mentioned above that the State Governments are asked to stop the practice of shifting cultivation in the protected forests. However, if the practice of shifting cultivation is on any land owned by an individual or a community, the State Government may declare that land as agroforest. The procedure for constituting village forests (Section 38 P,2f). However, the State Government shall not constitute any agroforest in an area having overall gradient of more than 30 degrees. The central or the State Government may make rules for the management of agro-forest prescribing minimum period of protection for shifting cultivation requiring clearing of trees, and for providing financial and technical assistance in the management of such forests.

Prohibition on Felling of Trees: The State Government is empowered to prohibit cutting, damaging, destroying felling or removing any class or kind of trees in any urban or rural area or part thereof. The State Government can constitute a Tree Authority for the notified urban and rural area and lay down duties and powers of such authority.

Duty on Timber and Other Forest Produce: The central government may levy a duty on all timber or other forest produce which is produced in the territories under the jurisdiction of the Act or which is brought from any place outside the territories under its jurisdiction. The State Government can continue to levy any duty on all timber and other forest produce until a provision

to the contrary is made by the parliament. In respect of forest produce disposed by the State Government by sale or otherwise, the State Government may levy a duty called Forest Development Tax at a rate not exceeding 15 per cent of the value assessed or amount of consideration paid therefore. This tax shall be in addition to any duty or tax payable in respect of such produce under any other law in force. The amount received from the tax shall be deposited in a special fund and shall not be a part of the Consolidated Fund of the State Government shall be used exclusively for reforestation, forest protection and other auxiliary purposes connected with tree planting, forest development programmes and the welfare of the people dwelling in forest, and of the weaker sections of the people dependent on forest produce for their livelihood.

Control of Trade, Possession and Transit of Timber and other Forest Produce: Several provisions have been made to control the trade, possession and transit of timber and other forest produce. It has also been provided that no person shall manufacture within a reserved or protected forest of within two kms from the limits of such forests, charcoal, lime, brick, catechu, catechin and any other product which requires timber fire-wood or any other forest produce for its manufacture. Provisions are also made to prohibit and regulate the establishment of a sawmill or a sawpit in any specified area and stranded timber.

Offences: punishments for several offences under the provisions of the proposed Act have been provided for. All offences under this Act shall be cognizible and any forest officer, police officer or revenue officer, may, without order from a magistrate and without warrant, arrest and detain in custody any person who has committed any offences under this Act.

Cattle Trespass: There are provisions to regulate trespassing of cattle in reserved, protected and village forests, Penalties for such offences have been made very severe.

#### **ASSESSMENT**

On the whole, the proposed Act is based on the National Forest Resolution of 1988. There is a definite change from the colonial and regulatory tone of the Indian Forest Act of 1927. The provisions relating to village forests and regulation of sawmills introduce desirable changes.

However, certain provisions go against the interests of the people, particularly adivasis and other forest dwelling communities, and should be modified or deleted. Such is the provisions that the forest settlement officer shall not, except with the prior approval of the state, admit a claim to pasturage or forest produce in the proposed reserve forest if the claimant is not a resident of a village or part thereof. The proposed Act encourages the constitution of village forest and it is possible that a number of village forests are constituted in the near future. Many of those with some rights over the produce in village forests may also be the gatherers of non-wood forest produce in reserve forest. This provision will very harshly affect them and, therefore, it should be deleted. It is provided that notification to de-reserve any reserved forest by the State Government can only be issued after a clearance has been obtained from the central government. However no such clearance shall be granted by the central government for regularisation of unauthorised occupation of any reserve forest or portion thereof, if such occupation is of a period after coming into force of this Act, without a resolution to that effect being passed by both houses of parliament. While it is necessary to see that there are no further encroachment on any land under reserved forest, this can be done without making it subject to a parliamentary resolution. The provision implies that the State Government and even the Central Government cannot be trusted to cheek the encroachment on reserved forest land. A similar provision has also been made in the case of protected forests and needs deletion. The control of the forest department over the

management of village forests has been very rigorous and may lead to conflicts between the village community and forest officials. These provisions need to be amended. The provision that whenever the village forest has been constituted out of a protected forest, all the provisions relating to protected forests will apply to it or part thereof, is quite unnecessary and repugnant to the spirit of the constitution of village forest.

It is possible that the exemption of the plantations of registered tree grower from the Land Ceiling Act may be misused by rich individuals and particularly big corporations. A similar provision in the draft of the National Forest Resolution was deleted when it was submitted to the parliament. On the whole, the act is definitely an improvement on the prevailing Indian Forest Act of 1927 and the one that was proposed in 1980 In can be further improved if the changes indicated above are made before it is introduced in the parliament.

#### **NOTES**

- For a critical review of forest legislation, see Chattrapati Singh, Common Property and Common Poverty; India's Forest dwellers and the Law, Oxford University Press. Delhi, 1986 For a criticism of the draft of the Forest bill 1980, see Sharad Kulkarni, Encroachment on Forest; Government versus People, EPW, Vol XVII, No 3, January 16, 1982, pp 55-59.
- For details, see Sharad Kulkarni, Forest Legislation and Tribals; Comments on Forest Policy Resolution, EPW, Vol XXII, No 50. December 12 1987, pp 2143.48.
- 3 sharad Kulkarni, Forests; Law versus Policy EPW VOL XXIV, No 16 April 22 1989 pp 859-62.

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## FORESTRY POLICIES, LEGISLATION AND PRACTICE:

Experience Of Voluntary Agencies In Karnataka\*\*

This paper deals with the Forestry: Policies, Legislation and Practices in the context of the grass-root experiences for over a decade in Karnataka including issues of policy changes for meaningful involvement of people in the management of natural resources and adopting a holistic and multidisciplinary approach to the issues of forestry and common lands. The focus is more on practices at the grass root level, and impact or otherwise of legislation in the context of the realities on the ground as experienced first hand with the people's movements for reclaiming of 75,000 acres of common lands, the large scale five year programmes like the Karnataka Social Forestry Project (KSFP) funded by the world Bank and the Overseas Development Administration(ODA) of United Kingdom. ODA is also currently funding a large-scale Western Ghats Forestry and Environment (WGF&E) Project in Karnataka.

and the paper also describes how the laws of the land like the Forest Conservation Act and orders of the Supreme Court of India are blatantly violated in helping the rich at enormous social

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<sup>\*\*</sup> This article is based on a paper presented at the "Regional Expert Consultation on Eucalyptus" held in Bangkok during October 4-8, 1993 organised by Food and Agriculture Organization (FAO) of the United Nations

and environment costs to the rural poor tribals. In addition the paper draws up on experience of other voluntary agencies in the country, studies by reputed scientists and national and international organisations including the Food and Agricultural organisation (FAO) of the United Nations.

### INTRODUCTION

It was in 1984 and 1985 that we in Samaj Parivartana Samudaya (SPS) and other members of the Federation of the Voluntary Organisations for Rural Development in Karnataka called FEVORD-K came face to face some environmental projects like the Karnataka Social Forestry Project (KSFP), the controversial joint sector company Karnataka Pulpwood Limited (KPL) and later the attempt to evict the tribals from the Nagarahole National Park and attempt to choke off the origin of three rivers at Gangamul in the Western Ghats by giving prior permission for prospective mining in Kuduremukh National Park right in the heart of the Western Ghats.

The KSFP was a five year, Rs.550 million project aided by the World Bank and the Overseas Development Agency (ODA) of United Kingdom and was launched in 1983. In many areas in Karnataka where member organizations of Federation of Voluntary Organizations for Rural Development in Karnataka (FEVORD-K) a federation of over 100 grassroots groups with the rural poor and tribals are working, there was a serious concern about the predominance (over 80%) of eucalyptus species both in nurseries and plantations especially in farm forestry which were invariably owned by absentee landlords. The eucalyptus was replacing the food crops like ragi (pearl millet), jawar (sorghum) and other millets. The Forest Department was forcing the eucalyptus species on the rural poor in both the decentralized kissan nurseries and the departmental nurseries.

As a result there was intense pressure on FEVORD-K to study these issues and take up with the Government and donor agencies, while the grass-root agencies took up a systematic campaign to create awareness among themselves, the rural poor and the tribals about these issues and learning from them. On the basis of the studies of the KSFP, similar projects in various parts of the country and the experiences gained, the FEVORD-K addressed a joint memorandum dt. November 28,1985 to the Chief Minister of Karnataka, President of the World Bank and the Head of the ODA giving specific suggestions for Government of the Social Forestry Project. There was good response from the Mid term Review Team of KSFP. The review Team considered our suggestion as constructive and tried to incorporate some of them for implementation of the next phase of the Review Team. At the end of the Project the species were changed from monoculture eucalyptus to multispecies. However, some major suggestions were not implemented as the Project had already completed more than half the period and also the dominance of eucalyptus species was reduced a great extent especially on community lots. Here it is relevant to note the following-"Objectives of social forestry, being the basic economic needs of the community aimed at bettering the conditions of living:

- 1. Fuel wood supply to rural areas and replacement of the cowdung;
- Small timber supply;
- 3. Fodder supply;
- 4. Protection of agricultural fields against wind;
- 5. Recreational needs (Report of the National Commission on Agriculture, 1976).

Farm Forestry was entirely another matter where primarily the absentee landlords had taken to eucalyptus with full encouragement and support of the forest officials. This experience also led us to study in depth the origin of the Forest Department

and its role vis-a-vis the local people and environment and also to a search for what would be an appropriate role for this Department and a forest policy which recognises the right of these 'communities over the forest produce especially Non-Timber Forest Produce (NTFP).

The Karnataka Pulpwood Ltd (KPL) was the issue where we got centrally involved through a very effective people's movement on questions of eucalyptus or commercial species and more importantly, the deeper questions of land, who controls them who decides what species to plant and who benefits from them. It was an enormous learning experience.

On 14 November, 1984, Government of Karnataka, signed an agreement with a pulp and rayon industry M/s. Harihar Polyfibres (HPF) to lease to KPL its forest lands, revenue lands mainly common lands to the extent of 30,000 hectares. The lands were leased to the KPL to grow eucalyptus and other fast growing species as a captive plantation of raw material for a period of 40 years at a rate of Rs. 1.00 per hectare a year. 87.5% of produce was to go to HPF and 12.5% of produce to the Government as lease rent. A 100% guarantee for the bank lease to the tune of Rs.300 million was given by the State Government alone.

During our visits and work in the villages., we came across many strong and vocal protests against the eucalyptus being propagated on the forest and village common lands. Going deeper into the issue, we found that, this opposition was not necessarily for eucalyptus as a tree, but eucalyptus as a symbol of invasion of industry on their common lands. Eucalyptus is viewed in this area as a plant which has deprived them of their common lands, fodder and fuel sources which were readily available before.

We learnt through experience that we should not get distracted in finding out the science of eucalyptus as a botanical species but that of who controls land and who decides what species to plant and for whose benefit? Here was a matter of people 's choice against that of Government in collaboration with a powerful industrial house for the sole benefit of industry, thereby depriving over 500,000 people from four districts of their basic needs of fodder, fuel, fruits etc.

This controversy over eucalyptus led to a systematic and deeper search for understanding the origin of eucalyptus and other commercial species of the various phases of Forest Policy in Karnataka and India, the larger indication of the social needs of the poor in the light of powerful forces expropriating the basic resources like land and financial input from Banks. We tried to know the role of the Forest Department and other Government machinery and whose side do they normally take and the constitutional provisions of establishing people's rights, over their resources. This also helped us workout a more comprehensive strategy to deal with the KPL issue. There was a combination of a powerful people's movement from below supported by scientific filing of a public interest litigation in the Supreme Court of India (W.P.No.35 of 1987) mobilizing support among the legislators, people's representatives, concerned bankers and Government Officials. This story has been very effectively narrated by Sadanad Kanvalli in the book "Quest for Justice" (1991).

Some of the other activities we have been involved, e.g. the Social Forestry Plantation(again of eucalyptus and acacia) in Medleri Village, the Save the Western Ghats March of more that 2000 Km long march, Integrated Wasteland Development Project in Ranebennur taluka, Dharwad district, Karnataka, have further contributed to our understanding and insights into the social and economic aspects of eucalyptus and other commercial plantations and their impact on the poor and the environment.

1. Conflict between the biomass needs of the poor and the raw material demands of industry; The species like eucalyptus which have very little value as fodder and which are beyond the reach of the subsistence mode of living to have any fuelwood value are at the centre of the conflict between the livelihood needs

of the poor and the new material demands of the industry. N.S.Jodha in his article "Common Property Resources (CPRs) and Rural poor in Dry Regions of India" has very effectively analyzed the dependence of the rural poor on the CPRs and the significant contribution of CPRs towards the employment and income generation for the rural poor (Economic and Political Weekly, July 5, 1986).

2. Industrial Orientation of Forest Policy; Since 1947 both in Karnataka and elsewhere in India, the industrial influence on forest policy can be seen through the four distinct phases it has gone through. This has been narrated succinctly in the article "Commercial Forestry: Defending the Indefensible" (Whither Common Lands? page 50-52) by Ramachandra Guha. The following table describes it further:

### FOUR STAGES OF INDUSTRIAL FORESTRY

Period	Method	Species	Agency	Prime beneficiary
1947	Selection feling	Indigenous commercial species	Forest Department	Industry
1980-85	Clearifelling and monocultural plantations	Chiefly exoctics	Forest Department	Industry
1975	Farm forestry	Chiefly exoctics	Commercial farmers	Commercial farmers & Industry
1985	Import and captive plantations	Exoctics	Joint Sector	Industry Importers

Source: "This Fissured Land; An Ecological History of India" by .Madhav Gadgil and Ramachandra Guha,. Oxford University Press,.Delhi, 1992.

The important examples of this industrial influence on the forest policy of Karnataka, which are easily applicable all over the country are as follows. In the first phase, raw materials were given to powerful industries at throwaway prices e.g. the West Coast Paper Mills got bamboo at Rs1.00 per tonne while the basket weavers paid more than Rs. 300.00 per tonne. Similarly, the Harihar Polyfibres (HPF) had a 30 - year agreement for 3,00,000 tonnes of eucalyptus at Rs. 24.00 per tonne which was lower that the cost of production at that time of Rs. 44.00 per tonne. In fact, the Public Accounts Committee (PAC) of Karnataka indicted the then Chief minister of Karnataka in 1980 of having caused a loss of Rs. 220 million to the public exchequer by staying the operation of the new rates of eucalyptus by issuing oral orders which were illegal. The public sector Hindustan Paper Corporation in Kerala was paying only Rs.11.00 per tonne for green wood of eucalyptus which was far below the cost of production.

Here the state plays the role of supplier of raw materials to the industry at throughway prices disregarding the needs of the poor and tribals causing heavy loss to the public exchequer and environment.

The second phase of this industrial forestry was marked by clearfelling of natural forests and replacing the natural strands by plantation of fast growing species like eucalyptus eg. in the evergreen forests of Western Ghats in Karnataka. 1,00,000 acres of evergreen forests were felled and planted with eucalyptus which were infected with fungal disease called pink disease which cut down their productivity to just 1 to 3 tonnes per hectare. Similarly, "many steep slopes of Western Ghats of Kerala were laid waste as the magnificent old strands of evergreens gave way to miserable strands of sickly eucalyptus" (Deforestation: Problems and Prospects by Madhav Gadgil, Foundation Day Lecture, May 12,1989).

The third phase of this industrial forestry was marked by farm forestry on private lands of mostly absentee landlords as part of "Social Forestry" schemes supported by World Bank and other international donor agencies. The species most promoted was eucalyptus and the Forest Department supplied free seedlings, technical help and soft loans all under the so called "Social Forestry" which was hardly anything but social. Our analysis of Karnataka Social Forestry Project funded by World Bank and ODA and similar projects elsewhere in the country confirmed the above. A more comprehensive study of Farm and Community Forestry by Gerild Foley and Geoffrey Barnand of Earthscan, a publication of International Institute for Environment and Development, UK 1984 further confirms similar lessons learnt from various Social Forestry Projects. A major part of this text is based upon a study of farm and community forestry commissioned by Forestry Department of FAO.

Another study, "British Aid to India; What Price?" by Steve Percy and Mike Hall (by Spokesman for Bertrand Russell peace Foundation, Nottingham, England), who studied the KSFP in detail had the following to say about farm forestry;

"In Karnataka 53 percent of holdings are less that 2 hectares and cover only 15.5 percent of the cultivated land. At the other extreme, 6 percent of all holdings cover 32 percent of the cultivated area. With such unequal land distribution, 80 percent of the project (farm forestry) is effectively targeted at a landed minority"

This is against the Land Reforms Laws of Karnataka.

Some of the supporters of eucalyptus claim that it can be good fuelwood. However, the realities show that very little of it is ever used as fuelwood in view of market. None other than the Directorate of Economics and Statistics of the Government of Karnataka in a Review Report based on a study of Marketing of the Covernment of the Cov

farm forestry produce of Eucalyptus and Casuarina in Kolar and Bangalore Districts of Karnataka in 1986 found the following;

"Between April 1984 and July 1985, around 96.2 percent of eucalyptus produced in Bangalore District and 97.5 percent of eucalyptus produced in Kolar District has been marketed. The entire quantity of eucalyptus sold in Bangalore District and 97 percent of the quantity sold in Kolar District was consumed as industrial raw material by M/s. Harihar Polyfibres: and hardly 3 percent sold in Kolar District has been used as fuel."

The fourth stage of the Industrial Forestry is marked by Joint Sector Company like the Karnataka pulpwood Limited (KPL).

Ramachandra Guha puts it in the following words in his article, "Commercial Forestry; Defending the Indefensible" Whither Common Lands? 1988):

"Not satisfied with all the concessions it has received so far (and which have exacted a heavy environmental and social cost), industry now wants to grab land to grow its own raw material. Hence, the takeover of village common lands (the so called C and D class lands) by KPL and its ilk."

This industrial bias of the Forest Policy needs to be looked at from the angle of the biomass needs of the poor both of whom are competing for the same land. Madhav Gadgil has done a comprehensive survey of biomass needs in various ecological zones of Karnataka State in his article "On Biomass Budget" delivered as Rajendra Prasad Memorial Lecture at Banaras Hindu University 1988. In his study he has clearly stated that there are acutes hortages of biomass needed by the rural people and forest dwellers and strongly recommends that what is needed is to make the common land more productive for meeting people's needs first and considers the KPL as clearly a retrograde step.

A study entitled "Common Lands and the Rural Poor; A Case Study Karnataka" conducted by Prabha Mahale and others in 1989 revealed that in Kusnur cluster of villages 30 percent of population was landless. Among the landed families, considering their little holdings, their fodder and fuel requirements were 1.92 tonnes per year and 0.37 tonne per year respectively. On detailed analysis of production of agro-wastes produced as against their demands, it was found that only a small fraction of the landed families could b totally independent of the not-cultivated common lands to fulfill their fodder and fuel requirements. The landless are considered to be totally department on the common lands while the landed were also found to be dependent on common lands, approximately 64 percent for fodder and 46 percent for fuel needs. Alienation of common lands for eucalyptus plantation by KPL (400 Hectares in the area) put further stress on the village lifestyle and economy in the whole cluster of villages studied.

Larger number of seasonal and long term migrations have become common.

Medleri Gomal Case: How market economy overtakes local needs of eucalyptus for biomass needs.

In Medleri village in Karnataka a 20 acre plot traditionally used as grazing plot by the village was used to raise eucalyptus in the year 1981 under Minimum Needs Programme. In 1988 when the time to harvest the eucalyptus came, a number of poor villagers gave their requests for the poles for their cattle sheds, houses, wood for carpenters, fuelwood by the weaker sections of the village. Sidelining all these, the Village Pradhan (elected leader) preferred to auction off the wood to a pulp and rayon mill. The Government had laid down rules and guidelines for the sharing of produce from such plantations on village common grazing lands. But after 9 years of waiting the villagers have received no poles, no fuel wood, no fodder from this eucalyptus

plantation that was grown for them on land that had been their grazing lands for decades. For this village, eucalyptus was more of a curse than anything else.

While the commercial interests were influencing the government and financial institutions including NABARD (National Bank for Agriculture and Rural Development) for meeting their raw material needs, the rural poor and the tribals along with the activists were continuing their struggle for survival which also created concern among sensitive bureaucrats and policy makers. One such major impact was the controversy raised by the Draft.

National Forest policy which was opposed very effectively by groups working with the tribals and rural poor. These discussions and debates have been covered by some articles and publications especially the book "Towards a New Forest Policy: People's Rights and Environmental Needs" (Walter Fernandes and Sharad Kulkarni, Indian Social Institute, New Delhi, 1986)

As a result of sustained pressure from outside and to some extent inside bureaucracy a much better National Forest Policy was adopted by the Indian Parliament (Janaaranya: People's Participation in Management of Natural Resources, Samaj Parivartan Samudaya et al. 1991,p. 18-29), which recognised the rights of local people on forest produce and also the need for active involvement of local communities and voluntary agencies in the protection of forests and development of degraded lands. This was adopted by the Union Cabinet of India after almost 15 years of debate and discussions.

Based on this forest policy and some meaningful experiments in involvement of local people in regeneration of natural forests most notably in Wet Bengal and Orissa states, the Ministry of Environment and Forests, Government of India issued a comprehensive policy circular on 1-6-1990 recognizing the rights

of local people and voluntary agencies for the Joint Forest Planning and Management (JFPM). This was a major breakthrough in recognition of the legitimate primary role of people in protection and development.

In the meantime, in Karnataka, largely inspired by the Save the Western Ghats March (SWGM) during which we came across a lot of resentment by the tribals and other communities living in the Western Ghats region against the eucalyptus and other commercial species. The FEVORD-K, SPS and the Centre for Ecological Sciences (OES), of the Indian Institute of Science, worked out for over 3 years a detailed framework for people's participation in the management of natural resources at the village level. This was finalised after thorough discussions among voluntary agencies.

Following the Government of India circular of 1-6-1990, many State Governments have issued Government Orders establishing Village Forest Committees (VFCs). The Karnataka Government also issued an order on 12-4-1993 on the same lines.

Another major example in Karnataka of asserting the need for people's participation and multidisciplinary mechanism for planning, implementing and monitoring of forestry projects is the Western Ghats Forestry and Environment Project (WGF&EP). After a sustained 3-year efforts, FEVRD-K,SPS and scientific bodies succeeded in their efforts (Aubrey Meyer; Save the Forests, Save the Planet Document, 1990).

On the other hand, the industry is poised to make the biggest state- sponsored land grab. The Ministry for Rural Development, Government of India, which is reportedly facing a financial crunch, is considering asking State Government to take "steps that will enable the long lease of Government wastelands to industry". However, V.B. Eswaran, a senior civil servant and bureaucrat with experience of working with the poor says, "If this

happens, the rural poor will lose their survival base" (Roychowdhury, Down To Earth, June 30, 1993, p.14).

While these do represent some important landmarks in both the directions, we have to go a long way in terms of establishing people's rights over the lands, their taking responsibility for protection and development of forests and being able to ward off the heavy pressure from industrial and other lobbies and preserving and enhancing biodiversity.

### Bio-diversity, culture and eucalyptus

Increasing deforestation to make way for eucalyptus plantation as happened in Karnataka has far - reaching effects on the culture and biodiversity.

Life in harmony with nature involves a dependence and care between nature and people who live near them. An intricate relationship is developed and honed through thousands of years. When destruction of such habitats occurs the first victim is local biodiversity, subsequently leading to extinction of species.

Extinction is the eventual destiny of all species, but at most times in earth's history, widespread extinction have been infrequent. The disappearance of a few species per million years is what scientists call a "background rate". As ecosystems are converted into farms, pasture, monoculture plantations in an illplanned way, the rate of extinction is likely to go millions of times higher than background levels (Worldwatch paper 78 June, 1987, p.6).

Loss of diversity has implications beyond the extinction of species when local populations of plants or animals are wiped out, the genetic diversity within each species that provides, capacity to adapt to environmental changes is diminished. The survivors of extinction, the record shows, tend to be ecological opportunists. They reproduce quickly, eat indiscriminately and tolerate a wide range of conditions - characterstics we associate with pests or weeds (Ibid, p 17).

With destruction of rural natural habitats for eucalyptus plantations the migrants or ecological refugees have risen in their members. Many of the urban migrants contrary to common belief are not lured by the city but are forcibly evicted by ecological destruction of their habitat, economy and culture. Due to public pressure the Government and forest departments have begun to modify their ways. One such example is JFPM, an experiment conducted towards fulfillment of village biomass needs from common lands and forest lands.

The role of the Government should be of the enabler. It should enable its citizens to take care of the natural resources. It should not play the role of an agent for the industry and the market economy. Some striking examples can be given of the stranglehold of multinational business corporations on the economies of banana republics and vanilla economy of Madagascar. Ultimately, whether it is bananas, sugarcane, vanilla or eucalyptus, the basic question remain unanswered in all the scientific jargon, who should benefit from the land and natural resources? And why?

Man is a social animal. His welfare lies in getting social justice in a democratic society. The answer to the question what social justice is meted out by the eucalyptus plantations especially in Karnataka and many other states comes unequivocally in a negative. The problems created by the plantations have gone against the social justice.

To quote Michael Robinson of National Zoological Park. Washington, D.C., USA:

"We are facing the enlightenment fallacy. The fallacy is that if you educate the people in the Third World, the problem will disappear. It won't. The problems are not due to ignorance and stupidity. The problems of the Third World derive from the poverty of the poor and the greed of the rich. The problems are those of economics and politics.

Inescapably, therefore the solutions are to be found in those same arenas" (Lewin.1986).

We are thankful to FAO for this opportunity to present the needs of local people in the light of extensive programmes by private and government agencies to plant eucalyptus on common lands. We feel the following conclusions drawn in the FAO Forestry Paper 59 of 1985 are still relevant and applicable.

"Stress that eucalyptus should not be planted, especially on a large scale without a careful and intelligent assessment of the social and economic consequences, and an attempt to balance advantages against disadvantages. This can probably best be done by a sympathetic examination of the ecological circumstances and of the needs of local people"

#### REFERENCES

- 1. Writ petition No. 35/1987 K. Shivaram Karanth and others versus Union of India, Supreme Court of India, New Delhi 1987.
- 2. Kanvalli Sadanand, "Quest for justice:" Samaj Parivartana Samudaya (SPS) Dharwad 1991.
- 3. Jodha N S "Common Property Resources and the Rural Poor in Dry Regions of India, Economic and Political Weekly, 5th July, 1986.
- 4. Gadgil Madhav and Ramachandra Guha. This Fissured Land: An Ecological History of India, Oxford University Press. Delhi 1992.
- 5. Report of the Public Account Committee, Government of Karnataka, 1980.
- Gadgil Madhav, Deforestation: Problems and Prospects. Foundation Day Lecture, Society for Promotion of Wasteland Development, New Delhi, 12 May, 1989.

- 7. Foley Gerald and Geoffrey Barnard, Farm and Community Forestry, Technical Report No.3 Earthscan-International Institute for Environment and Development, London, 1984.
- 8. Hall Mike and Steve Percy, British Aid to India: What Price? Spokesman, Nottingham, England, 1989.
- 9. Review of Impact of Social Forestry Programme on Land Use in Kolar and Bangalore Districts, Government of Karnataka, Directorate of Economic and Statistics. Bangalore 1984.
- 10. Guha Ramachandra, Commercial Forestry: Defending the Indefensible. Deccan Herald, Bangalore, 19 June, 1988.
- 11. FAO, Eucalyptus for Planting FAO, Forestry Series No. 11. FAO, Rome 1979.
- 12. Samaj Parivartana Samudaya et. al. Whither Common Lands? Smaj Parivartana Samudaya (SPS), Dharwad 1988.
- 13. Gadgil Madhav, On Biomass Budget, Dr. Rajendra Prasad Memorial Lecture, Benares Hindu University, Varnanasi, December 4, 1986.
- 14. Mahale Prabha, Ramachandra Guha and Prabhu Dandavatimath: Common Lands and Rural Poor: A Case Study in Karnataka, Report submitted to Indian Association for Women Studies and Environmental Services Group, WWF-India. New Delhi, 1989.
- 15. Indian Social Institute, Towards a New Forest Policy: People's Rights and Environmental Needs, Editors Walter Fernandes and Sharad Kulkarni, Indian Social Institute, New Delhi, 1986,
- 16, Janaaranya: People's Participation in the Management of Natural Resources, Samaj Parivartana Samydaya (SPS), Dharwad, 1991.
- 17. Roychowhdury Anumita, Industry casts covetous eye on village commons, Down To Earth, June 30, 1992, p.14.

- 18. Meyer Aubrey, Communication to Lynds Chalker, Minister for ODA, London: Save The Forest Save The Planet, London. November 25, 1990.
- 19. Wolf Edward C: On the Brink of Extinction: Observing the Diversity of Life, Worldwatch paper 78, Worldwatch Institute USA, June 1987.
- 20. Lewin Roger, Damage to Tropical Forests, or why were there so many kinds of animals? Science: 149 10 October, 1986.
- 21. Poore M.E.D. and C.Fries, The Ecological Effects of Eucalyptus, FAO Forestry Paper 59, FAO, Rome, 1985.

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### MISSING THE WOODS FOR THE TREES\*\*

The paper manufacturing industry has lately been demanding access to degraded forest lands to set up captive plantations for meeting its raw material needs. The concept is quite appealing - the government possesses wastelands but lacks funds, while industry has both capital and technology, and, hence, is best suited to afforest degraded lands. In the process the poor will get jobs. So why should one object? At the risk of being branded anti-industry, a counter-argument must be put forward.

One would wholeheartedly support the involvement of industry in reclamation of waste-lands, like Rajasthan's desert areas, the Bhal lands of Gujarat, Madhya Pradesh's ravines and saline lands of Uttar Pradesh. The total area of such lands is estimated at 20 million hectares.

In fact, several State Governments have in the past offered such degraded land on lease, but industry has shown no interest. Despite the high initial cost of reclamation, these lands have the advantage of being available in contiguous patches and hence are amenable to economies of scale.

The situation would be entirely different if village commons or degraded forest lands are leased to industry. Such lands ma have a low tree density, but satisfy the fuel and fodder needs of a large populace. In fact, these lands are degraded because they

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suffer from extreme biotic pressure, and require neither capital investment, nor higher technology, but protection and recuperation, which can be done only by working with the people, for which industry has neither expertise nor patience.

West Bengal's experience reveals the benefits of involving the local populace (about 2,000 peoples' forest protection committees have regenerated more than 3 lakh hectare of sal forests with little extra investment, simply by protecting them, by promising the people that wood and nonwood products would be shared).

If land on which peoples' livelihoods are dependent are given to industry, the corporate titans may have to employ muscle power to keep people at bay, thus escalating social tensions, which are already quite acute in several forest and national park areas.

Even within the industrial sector, paper and other large industries consume just a fraction of forest products. Ninety percent of forest raw material is processed by the 32,000 saw mills and a larger number of cottage units, who will lay claim to grab concessions from the Government. Those involved in coffee, cashew and palm plantations will also put in their claims. Like the paper industry, the planters will raise short term and quick-growing species in place of multi-layered mixed forests.

That is why the ecological implications of leasing degraded land need to be considered. Using forests for industry will be setting the clock back, showing that we have learnt nothing from the past mistakes of trying to create man-made forests which were ecological disasters, besides completely alienating the people and leading to faster degradation. According to industry's own admission, its requirement can easily be met by 2 million hectare of degraded land. Compared to this, there exist 141 million hectare of cultivated land and 35 million hectare of farmer-owned but uncultivated wastelands. These lands have the potential of

producing pulpwood, especially in view of the fact that both eucalyptus and bamboo are short-rotation crops and eminently suitable for the farm sector.

In fact, the bogey of raw material crunch is no longer valid, given the vast expansion of the farm forestry programme. There is a surplus of eucalyptus wood today, as is evident by the sharp fall in its price.

The problem is more locational, since industries get established close to government forests, whereas raw material is available in areas which were covered by the Green Revolution. A practical solution would be to split the processing units - to establish pulp-making plants close to farm forestry areas, and then transport pulp to paper mill. If industry produces its own raw material, whom would the farmers sell to? Sixty per cent of farm land is owned by rich and affluent farmers, who are market-oriented, and can be trusted to fulfill the requirements of industry. They are even prepared to produce teak wood, if the Government removes restrictions on the felling of teak trees from private lands and on its movement.

Industry's overall demand of industry is limited. If this demand is allowed to be met by leasing, it would adversely affect the farm forestry programme, which is one of the cheapest and most sustainable methods of producing wood.

The claim of the industry that it would increase production is not correct, as any afforestation by them will be at the cost of tree planting efforts by farmers on privately-owned degraded lands, tubewell enclosures, and home-steads, where the social cost of production is minimal, as these lands are of no use for cultivation.

Farmers exploit their own family labour (which is unpaid), and therefore can produce wood cheaper than industry. Farmers

harvest their trees during the lean agricultural season and thus are able to achieve further savings in cost by spreading family labour inputs more evenly through the year.

Lastly, degraded forest lands with crown density of 10 and 25 per cent are not likely to be available in contiguous patches, unless of course the gameplan is to show good forests as degraded in connivance with lower-level officials. Therefore, industry should be asked to establish ties with farmers who will produce raw material if given a remunerative price, just like poplar growing farmers have been liked to a match factory in northern Uttar Pradesh. This experiment shows that, with technological back-up, timber-size trees suitable for sawing can be raised on farm lands within 8 years.

In fact, due to the farmers' enthusiasm for growing poplar, its enhanced supplies have led to the establishment of several plywood factories in that area, thus providing considerable downstream employment. It is a myth that industry cannot deal with farmers directly. For several crops like sugarcane, potato, rice and cotton, industry has been in touch with farmers, for decades. In the ultimate analysis the question to be asked is, whether the claim of the industry over forest lands is based on sound economic rationale, or is it a seductive myth and a ploy to grab the good quality forest lands.

Upendra Baxi \*

# TOWARDS A DESIGN OF COUNTERVAILING PEOPLE'S POWER IN FOREST LAW AND ADMINISTRATION:

Agendum For Democratic Law-Making \*\*

The draft Indian Forest Bill, 1980 provides an astonishing testimonial to the colonial character of our law-making. colonial law views people not as a part of the development effort but rather as groups to be governed by the bureaucracy: as objects rather than subjects of development. The administration has power over people; the people have rights but only on paper, so difficult the legal system makes it on the whole to realise these rights.

The colonial law is typically paternalistic. The administration knows the problem and knows the solution. Therefore, it is the duty of the people to cooperate and all would be well. The colonial law - makers do not respect or wish people to be self-reliant or participate in policy decisions vitally affecting them.

Colonial law assumes that the bureaucracy assigned to administer a law or policy is more virtuous than the people; the law creates many offences and sanctions for individuals or groups violation the norms. Correspondingly, there are very few sanctions prescribed for violation of norms by the administration itself: these are relegated to general laws (like the Penal Code or the

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Prevention of Corruption Act) which are made very difficult to enforce. Most people do not know about these, and most to enforce. Most people do not know about these, and most officials behave as if these did not exist at all.

Colonial law usually makes things worse before it, if at all, makes them better for the people. It allows for a lot of governmental lawlessness and administrative deviance; it creates possibilities of repression and generally adds to the misery of the people (Baxi 1989a: 21-33).

### People's Power

There is no reason why after three decades of independence, we should tolerate the colonial approach to law-making and administration. The Forest Bill, therefore, offers us all the best opportunity to insist that the laws be made as if people mattered. It is time that we asked for a balance of power, in the design of the law, between the rulers and the ruled. It is time that we insisted that the law recognised and facilitated people's power as a check on bureaucratic power. It is time, therefore, that we looked at the design rather than merely the details of the law.

We should assess the law simply by asking two questions: what powers does it confer on the bureaucracy over the people? And, what powers does that law give to the people over the bureaucracy? The state needs powers of regulation and sanction for any of the policies or values. The usual way to prevent excesses of power is to provide that people can go to courts and get these cured. We know which people can go to courts for their rights; the poor do not go, but are usually taken to courts. A significant exception is now provided by the Supreme Court of India through its dynamic "epistolary jurisdiction." Social action groups can now espouse the causes of the poor and exploited by the simple device of writing letters to the Supreme Court which treats them as writ petitions (for details see, Baxi 1982b).

The opportunities for the poor to go to courts for enforcement of their rights is important but not enough. For that opportunity to be real and meaningful, the law must create necessary conditions. The law must build in mechanisms for countervailing legal power for the people. This can be done in several ways: let us ask that the proposed Forest Bill experiments in that direction for the good of us all.

### Some Suggestions

First, the forest dwellers should be recognised to have a right to be consulted in the making of laws that affect them. The provisions of the proposed law should be discussed with the forest people's groups by various committees created for this purpose throughout India. The counter-proposals thus arising should be presented to Parliament and the people through a White Paper type document. And the Bill should be drafted or redrafted in ways which reflect the consensus.

This is not as startling a suggestion as it might appear at first sight. Changes in many areas of the law proceed by consultation with affected groups. Currently, the entire legal profession is being consulted concerning measures of reform in the judicial administration.

Strangely, in revising the Forest Act, only the bureaucrats and technocrats have consulted each other, at the cost of the forest people. The Central Forest Commission of Agriculture, a draft bill as early as 1974. The draft was examined by numerous Sub-Committees. The only body which was consulted was the Indian Board of Wildlife! The draft was ready in 1978 and matured into a bill in 1980 (Kulkarni 1982: 55-59). Even in August 1982 when the Central Board of Forestry (CBF) met to reconsider the Bill, in the wake of public protest, it did not see any point in consulting with grassroots organisations and groups of the forest dwellers. It was assumed that the reconstituted CBF with a broad-based

membership would constitute the "best forum" for providing a national consensus on the forest legislation (Govt. of India 1982).

Social action groups concerned with forest law and administration must continue to protest the mode of policy and law-making. That mode must, as a matter of principle, involve participation by affected groups. The issue transcends forest legislation and reaches out to the vital principle of public participation in law-making. Without such participation, there is no hope for the transformation of the colonial nature of the Indian Legal System (Baxi 1982a: 41-57).

Second, the Forest Bill must contain provisions for effective communication of all decisions made under it. The passing reference of notifying certain decisions of the Forest Settlement Officers (e.g. Section 6) by posters in regional languages is welcome, but just not enough. It presupposes that people can read, when most cannot. It also presupposes, that this requirement would be strictly followed; but no sanction, invalidating the decisions if this is not followed, is provided for. So, we can tell what would happen in practice!

Effective communication of legal decision is necessary to provide people with countervailing legal power. This must be recognised as a right. No decision, for example, proclaiming a forest area as a reserved forest should be regarded as binding unless it has been effectively communicated. This means a binding duty to notify people's organisations and groups in each area. Where none exist, the law should cast a duty on the panchayats or if these, too, as is often the case, do not exist, the law should be required to create communication forums for proper dissemination. State electronic media - the radio, television and the films division - should be under a duty to assist the dissemination of laws and decisions under the laws affecting the forest people.

Third, major powers under that Act should not be exercised without a representative or group hearing. The rights given to individuals for hearing are important; but in regulating forests we are essentially engaged in the regulation of collective rights. Neither the record of rights nor the decision to ban shifting cultivation or the decision to reserve or de-reserve certain forest areas should be taken without adequate participation by the concerned people. Their difficulties should be known and attended to before decisions are taken, not afterwards. We all know what happens (e.g. relocation or resettlement) when decisions are made without people's participation. What happens is disaster for the destitute; our Constitution forbids exercise of powers in ways which cause disasters for the "weaker sections of society".

Fourth, all administrative actions should have a time schedule which people must clearly know about. The colonial legislation prescribes, typically, time-limits within which affected people must file appeals or representations. But no time-limits exist for the administrator. They may hurry, slowly, indeed as slowly as they choose to. Their powers do not dwindle with time; people's rights do. This gives administration enormously superior power over the people. There is no reason why this should be so in Independent India, after thirty five years of independence.

Fifth, the Forest Bill must provide special categories of crimes and punishment for the deviant administrators as it seeks so effectively for the deviant forest dwellers. If administrators are to have more and more powers, they should also have increasing liabilities for default or abuse of power. Every law carries with it the possibilities of abuse of power; but few laws try to check or contain these. A law, like the present Bill, gives power to a bureaucracy which is virtually invisible. It operates, as they say, in the jungle; it rarely comes up for national public discussion as other bureaucracies. Providing that certain abuses of power shall

be special offences is an antidote to their exalted pinnacles of total unaccountability.

Sixth, special offences should also be created for violation of the law by state and private corporations and agencies. Only the naive would not know what forest contractors do to mock at forest laws and policies; and only the wicked would say that the bulk of forest problems are created by the adivasis them selves! Contractors function in a system of political and governmental support and patronage. A responsive law must provide for special offences and sanctions, and high punishment, for these offenders. This would be in keeping with the national policy in dealing with socioeconomic offences, especially for the urban consumer. Why stop, pray, when we come to the rural poor?

Seventh, countervailing legal power can only come through the effective provision of legal services to the forest dwellers. The Bill should have a full chapter of provision of legal services through local-level legal aid committees,. This is now required by the Constitution itself. Just as the Directive Principle 48A commands protection of environment and safeguarding of forests (on which the present effort of legislation relies), Article 39A clearly commands the State to "provide free legal aid, by suitable legislation or schemes in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." Every law passed by the state must now carry out this mandate, if it is not to violate the letter and the spirit of the Constitution.

In addition, as per the National Committee on Implementation of Legal Aid a tiny fraction of the massive forest revenues need to be allocated for this purpose. The forest bureaucracy must be under statutory duty to lend all assistance to effective delivery of legal services which the legal aid committees might propose, including generation of para-legal cadres among the affected people of innovative instrumentalities. If the State has the problem of regulating people in their deviance, the people

have the problem of regulating administrative deviance. There is need for mediating structures such as Ombudspersons for forests and forest peoples.

Courts are distant; legal process is dilatory, cumbersome and full of costs, material and social.

Quick, effective and binding intervention by impartial authorities is needed to correct arrogance of power in the field. The Forest Ombudsperson should be obligated to work with the people's organisations, where they exist. Just because the idea of Ombudsperson has not worked at the national or state level in relation to the political system, we should not condemn it as a totally irrelevant idea in all fields, The Ombudsperson will help the people, the administration and the goals of law and policy more effectively than, perhaps, any other agency.

### Conclusion

The Forest Bill, as proposed, presents unrivalled opportunities for the poor people and social action groups in India to challenge the colonial mode of legislation. It enables them to begin at the very beginning rather than, as has been usual, at the very end, of the legal process. Instead of having to go to Courts for meagre and marginal reliefs, they have now the option to so influence the design of the policy and the law as to maximise countervailing legal power. Human and humane legislation is possible only when people are taken seriously.

Let us try to develop consensus on the nature and type of legislation; let us entrench the conception of countervailing legal power of the people. If we achieve this, the substance of the forest policy would cease to appear as malignant as it does now.

### Ramachandra Guha\*

## FORESTRY DEBATE AND DRAFT FOREST ACT - Who Wins, Who Loses?\*\*

A careful reading of the Government's draft new forest act, to replace the Indian Forest Act of 1927, shows that its real aims are (i) to restrict people's rights in reserved forests, which are owned and managed by the state; and (ii) to sharply limit the area or extent of village forests in which local communities could exercise more effective and independent control.

I

In the global history of natural resource management, there are few institutions as significant as the Indian Forest Department. Set up in 1864, it now controls over one fifth of the country's land area. Not only is the Forest Department India's biggest landlord, it has the power to affect the life of practically every citizen. In what is still a biomass-based economy, all segments of Indian society peasants, tribals, pastoralists slum - dwellers and industry-have a heavy dependence on the produce of the forests, as the source of fuel, fodder, construction timber, or raw material for processing.

And yet, in the century and a quarter of its existence, the Forest Department has been a most reviled arm of the Indian State. Through the colonial and post-colonial periods, popular opposition to the workings of the Forest Department has been both

<sup>\*</sup> Economic and Practial weekely, August 20, 1994

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sustained and widespread. Simplifying brutally, one might say that underlying these varied protests have been two central ideas; and that the Forest Department's programmes of commercial timber harvesting have seriously undermined local subsistence economies.

Popular protest movements in defence of forest rights go right back to the inception of state forestry but curiously a public debate on the direction of forest policy is of quite recent provenance. A comparison might be made here with respect to wages and work conditions. At least from the 1920s, the rights of cultivators and factory workers had figured high on the agenda of the national movement. Again, since independence, political parties of left and right have cultivated unions of workers and peasants, while a variety of new laws and policy initiatives have tried, admittedly with mixed success, to safeguard their rights.

By contrast, it is only from the early 70s that intellectuals and activists have picked up, in any serious fashion, the longstanding grievances of forest-dependent communities. However, in the last two decades the working of the Forest Department has come under close and critical scrutiny. It has been demonstrated that state policies have excluded the majority of the Indian population, namely tribals and peasants, from its workings while favouring the interests of a select group of industrial and urban consumers. Nor are groups working with tribals and other forestdependent communities the only critics of the Forest Department. Conservationists, for instance, have argued that commercial forestry has contributed significantly to the decimation of biological diversity and to an increase in soil erosion and floods. More recently, industrialists who have hitherto been the prime beneficiaries of forest policy have hit out at the department's selective phasing out of subsidies granted to them, urging that they continue to be given preferential treatment in the supply of forest produce. Faced with sharp criticisms from several quarters, senior forest officials insist that they are unjustly being made scapegoats, while the real causes of forest destruction- in their view, exploding human and cattle populations-escape identification.

In this ongoing debate on the direction of forest management, it is possible to identify four key actors. These might be characterised as wildlife conservationists, timber harvesters or industrialists, rural social activists, and scientific foresters respectively. These are indeed 'interest groups' in the strict sense of the term: that is, each has a specific claim on the resource under contention, and lobbies actively to defend or promote this interest. What is noteworthy is that in each case, the management proposals advocated by the group seek wider support from a sophisticated theory of resources in which their own specific interests are presented as being congruent with the general interest of society as a whole.

Wildlife conservationists are an interest group with an influence on state policy wholly out of proportion to their numbers. While their focus in practice has been on the preservation of unsplit nature, defenders of the wilderness are prone to advance moral, scientific and philosophical arguments to advance their cause. Although their initial and possibly still dominant impulse is the aesthetic value of wilderness and wild species, conservationists have found strong support from recent biological debates. The theme of biological diversity as an essential component of a direct and indirect, known and yet to be discovered survival value for humanity as well as an emphasis upon the 'intrinsic' rights of non-human species has been prominent in recent debates on the preservation of wilderness areas. The quite specific interests of nature lovers in the preservation of wilderness are thus submerged in the philosophy of 'biocentricism', which calls for strong action by human beings on behalf of other species.

These philosophical claims notwithstanding, in India a select group of exhunters and naturalists has been in the forefront of wilderness conservation. Their concern has been overwhelmingly with the protection of endangered species of large mammals such as the tiger. rhinoceros, and elephant, Their influence is manifest in the massive network of parks and sanctuaries, many of which are oriented around the protection of a single species, such as the 18 parks under Project Tiger Wildlife conservationists share, with senior bureaucrats in particular, a similar educational and cultural background, and this proximity has in no small way influenced the designation and management of wildland. But for all their talk of the rights of 'nonhuman nature', most conservationists have been deeply insensitive to the rights of villages displaced by national parks or whose access to forest produce has been curtailed by their constitution.

The second important group in the Indian forestry debate consists of those who view the forest as a source of industrial raw material. In terms of their management preferences, timber harvesters are the polar opposite of wilderness purists. While the latter stand for a 'hands off' management style, which implies the minimum possible interference with nature and natural processes, industrial exploitation of the forest often leads to a substantial and even irreversible modification of the ecosystem.

The industrial view of nature is simply instrumental. For the timber harvester, the forest is but a source of raw material for his factory. But the pursuit of profit dictates a pragmatic and flexible attitude towards forest management. Thus in the past, industrialists had been content with letting the state manage forests, so long as they were assured abundant raw material at rockbottom prices. But now, with increasing deforestation and the withdrawal of subsidies, paper, plywood and rayon factories have begun to intensively lobby for the release of degraded forest lands for their exclusive use, as 'captive plantations'. Notably, in

response to the environmentalist challenge of the last two decades, some industrialists have been quick to develop their own general theory of resource use. In arguing that they must continue to have first claim to the produce of public lands, they invoke the equation in conventional development thinking of industrial growth with progress and prosperity. At the same time, timber harvesters claim that the allotment of land to them as captive plantations will significantly lessen the pressure on natural forests (whose destruction in the past, largely at their own hands, they had of course been quite indifferent to).

By rural social activists I mean those individuals and groups working with communities who have an acute dependence on the forests for their livelihood. In present day India this would include communities of hunter-gatherers, swidden agriculturists, pastoralists, artisans, landiess labourers and small and medium farmers. A large proportion of the rural population lives close to a biological subsistence margin, and access to fuel, fodder, small timber and non-wood forest produce is critical to their survival and subsistence. Moreover, most Indian villages have stayed on one site for centuries, and the collective consciousness of their inhabitants stretches far back into the past; state usurpation of the forest is from this perspective a comparatively recent phenomenon, and thus resolutely opposed by tribals and peasants who continue to cling tenaciously to traditional conceptions of ownership and use.

These deep rooted animosities are invoked by rural social activists in their polemic against state forest management. Some among them call for a radical reorientation of forest policy, so that it would more directly serve the interests of subsistence peasants, tribals, nomads, and artisans. Others go turther in asking for a total state withdrawal from forest areas; these can them revert to the control of village communities, which they believe have the wherewithal to manage these areas sustainably and without

friction. These recommendations draw support from a powerful philosophy of agrarian localism, namely, Gandhism. Where Gandhi, the 'Father of the Nation', always gave primacy to rural interests and needs, the policies of independent India are indicted (for the most part, rightly) for being heavily biased in favour of the urban -industrial sector.

We come finally to the group in actual territorial control of forests and wilderness areas. The brief of the Forest Department might be defined as the adjudication, in an ostensibly scientific and objective manner, of the competing claims of the three interest groups dealt with above. Historically (that is, in the late 19th century, when their profession emerged), scientific foresters saw themselves as heralding the transition from laissez faire to state-directed capitalism, in which they were, along with other professional groups, the leading edge of economic development. Conservation has been for them the 'Gospel of Efficiency', with scientific expertise and state control its prerequisites. These ideological claims notwithstanding, forest land and the discretionary power that goes with it. It must also be said that, whether at their own initiative or at the behest of their political masters, in practice the Indian Forest Department has consistently put industrial exploitation ahead of both ecological integrity and the rights of local communities.

In this manner, through the skillful submergence of specific interests in a general theory of the human (and natural) good, these competing groups have tried to legitimise their claims on forests and forest produce. The territorial aspirations of foresters are accompanied by claims to monopoly over scientific expertise; the aesthetic longings of nature lovers are legitimised by talk of biological diversity and the ethical responsibility of humans towards other species; the profit motive of capital masquerades as a philosophy of progress and development; and the requirements of tribal and peasant communities are cloaked by an ideology that,

in a manner of speaking, opposes country to city and Bharat to India.

Finally, let us note the varying positions on state control over forests and wildland. Two groups are unambiguous in supporting state control, even if they insist that the state enforce definitions of forest use. Thus conservationists see a powerful, interventionist state apparatus as indispensable both in designating wilderness areas and in subsequently keeping out intruders, while for scientific foresters total state control would allow them to plan rationally at a nation-wide level, without having to take account of the views on the subject of the 'non-expert' citizenry. Rural social activists, for their part, are by and large opposed to strict state control, arguing for a greater role to be given to community ownership and management of forests. As for timber harvesters, they are characteristically opportunistic on the question of forest ownership; calling when it suits them for the privatisation of forest land, and when it does not, for the provision of subsidised raw material from state-managed forests.

These four contending groups apart, a fifth category of resource users has also exercised a major influence on the direction of Indian forestry. This consists of the urban upper and middle classes, who constitute a substantial and growing market for a variety of forest produce. Unlike the other actors in the forestry debate, urban consumers, while numbering in the tens of millions, are a somewhat disaggregated group, without a co-ordinated perspective on forest policy. Nonetheless, their demands for plywood, quality furniture and processed non-wood, forest produce have powerfully stimulated processes of forest destruction. Ironically, this upper class also comprises the constituency from which wilderness conservationists spring, and to which their arguments are largely addressed. Where the consumption patterns of the urban elite contribute on the one

hand to forest destruction, their aesthetic and recreational preferences, on the other hand, help determine the priorities of national park management. Squeezed between these twin processes of destruction and conservation are the vast bulk of the rural population, who have little stake either in commercial forestry or in wilderness areas as they are presently managed.

П

The evolution of state forest policy and its changing orientation over time can best be understood in terms of the competing claims, and relative influence, of the four interest groups identified above. From 1864 to 1972, forest management strategies were markedly biased in favour of commercial and industrial exploitation, with little attention paid to sustainability or to social justice. However, in the last two decades, as the forestry debate has intensified, no clear thrust has emerged, with the state responding selectively to the claims of different interest groups.

The Wildlife Protection Act of 1972, amended and made more stringent in 1991, and the creation of a vast network of strictly protected parks and sanctuaries are initiatives that respond most directly to the arguments of the wildlife conservationists. Likewise, the liberalisation of wood imports, the continuance of industrial exploitation in state forests despite the evidence of the deforestation it has caused, and more recent moves towards the creation of captive plantations, might all be viewed as evidence of the continuing influence of private industry. As for rural social activists, despite representing a much larger constituency than both conservationists and timber harvesters, they have had, in the past, minimal influence on the direction of forest management. Their call for a decentralised, and democratic, system of forest management has by and large gone unheeded, with one recent and potentially radical exception. This is the programme of 'joint forest

management' or JFM. In West Bengal, where it was initiated, JFM has proved to be a dynamic and successful programme, with state and villagers co-operating in protecting and renewing degraded forests over several districts of the state. Thousands of Village Forest Protection Committees have been constituted, which then manage forests in collaboration with the Forest Department.

Picking up on the success of the Ministry of Environment and Forests in New Delhi wrote in June 1990 to the Forest Secretaries of all States and Union Territories, asking them to actively involve village communities and voluntary associations in the regeneration of degraded forest lands. Following this circular, ministry officials prevailed upon 15 State Governments to pass orders allowing for the involvement of villagers in the management of degraded forest controlled by the forest department. However, progress on JFM outside West Bengal has thus far been slow. For one thing, there has been resistance from the bureaucracy; for another, insufficient attention has been paid to the need to refine the concept to allow for regional variations in economy and political culture. However, the government orders are in themselves a valuable step forward. They constitute an official acknowledgement that a prime reason behind the reckless denudation of government forests in the past was the failure of the forest department to work in cooperation with village communities rather than in opposition to them. In theory, and potentially in practice, JFM thus runs counter to the centralising and exclusionary thrust that has otherwise characterised state intervention in forest areas.

Through all this, of course, the fourth group in the forestry debate, the Forest Department itself, has retained most of its powers. The Forest Conservation Act of 1980 (amended in 1988), which makes it much more difficult to convert forest land to non-forest uses without the clearance of the Central Government, has consolidated its territorial control, as has the Wildlife

Protection Act. In West Bengal, the political context might have made forest officials (with the bureaucracy in general) more responsive to pressures from below, but elsewhere in India, state Forest Departments have continued to be indifferent or hostile to the rights of tribals and peasants. Although a few Divisional Forest Officers have responded sympathetically to the programme, there is little question that the department as a whole has resisted the spread of JFM to other parts of the country (the government orders referred to above, it might be noted, were passed at the urging of energetic IAS officers in the Environment Ministry).

With the forestry debate in a fluid and somewhat unresolved state, the Ministry of Environment and Forests has now drafted a comprehensive new Forest Act, to replace the existing Indian Forest Act of 1972. This draft, if passed into law, will have profound implications for the direction of forest management in general, and for the rights of forest dependent communities in particular.

In his comments on the draft Act (EPW, July 23), Sharad Kulkarni seems to have missed the main import and consequences of the proposed legislation. His 'assessment' of the draft is, if not a 'misassessment', most certainly a mistaken assessment. One reason for this is that Kulkarni's article takes no account of the sociological context, provided by the competing claims and pressures of the four interest groups I have identified as the crucial players in the forestry debate. Another reason is that, taken in by some of the draft's high sounding phrases, he has completely ignored the two central, and dangerous, ideas which underpin the proposed legislation: first, that forest management should in future be guided by the concept of 'carrying capacity', and second, that the centralisation and consolidation of state power is the way to protect and revive India's dwindling forests.

The assessment of the Act that follows seeks to redress those omissions. However, my aim is not primarily to correct Kulkarni, but rather to locate and interpret the draft Act in the context in which it makes most sense: namely, the claims of our four interest groups. Which of these groups seek to benefit from the bill, and which will be most vulnerable to its provisions?

The Act recently drafted by the Ministry of Environment and Forests is to be called 'The Conservation of Forests and Natural Ecosystems Act'. As the very title indicates, there is to be a strong, perhaps even dominant, emphasis on conservation and environmental protection. The detailed provisions of the Act also make it clear that its intention is to create or maintain reserved forests under strict state control, for preserving the ecological balance. Thus in comparison with the past, there is a relative de-emphasis on industrial wood production from forest areas. 'Sound ecological management' is here held to be the main objective of forest policy, rather than the 'sustained-vield forestry' which was the guiding principle previously. ('Sustained-yield' was but a euphemism for industrial exploitation, which was in practice environmentally destructive and quite unsustainable in the long run). Again, Section 40.Al of this draft provides that State Governments have to get the permission of the Central Government before entering into any agreement for supplying raw materials to industry.

This ecological emphasis also lies behind the checks on further encroachment of diversion of forest land. Sections 5 and 34 prohibit the State Governments from granting pattas or occupancy rights to those who are unauthorised encroachers on reserved or protected forests, without the permission of the Centre. Likewise, the Central Government can give directions to any State Government (cf Sections 3(2) and 27A) to constitute reserved forests in a specific area and ensure that these instructions are carried out.

This ecological focus is a distinctive feature of the proposed act. However, it is combined with a more traditional emphasis on state control over forest areas. We have here a very state- oriented piece of legislation which seeks to considerably slow down, and perhaps even reverse, the trend of greater popular participation in forest management. The explanatory notes say that the new Act's "ultimate objective is either to constitute reserved forests or village forest", in the process gradually doing away with the intermediate category of protected forests. However, a careful reading of the Act shows that its real aims are: (i) to restrict people's rights in reserved forests, which are owned and managed by the state; (ii) to sharply limit the area or extent of village forests in which local communities could exercise more effective and independent control.

Let us take these two aspects in turn. Sections 1.12 and 13 (d) state that the exercise of rights in reserved forests, such as the collection of fuel, fodder, etc, can be continued "subject to the carrying capacity of the land in question and prevention of its overuse". And if the land is considered "already degraded", the Forest Settlement Officer can immediately stop the exercise or rights until he is satisfied that the land has been "restored to its potential productive capacity". Again, Section 22A provides that all rights can be commuted, i e, extinguished with a one-time payment, if the Government considers this to be necessary for the prevention of "degradation of the said reserved forest". Likewise, Section 76A reserves to the Central Government the right to make any rules for "rationalising rights, privileges and concessions in respect of forest produce from reserved and protected forests". 'Rationalisting' is, of course, only a euphemism for 'extinguishing'.

Now 'carrying capacity' is a concept very difficult to define or implement. The act itself does not attempt a definition or explanation, perhaps for the reason that no definition is possible. For the notion of carrying capacity depends on so many interrelated factors, such as soil type, climate, patterns of use, past history of forest, etc, that a precise estimation is virtually impossible. However, under this Act a forest officer can arbitrarily decide that the 'carrying capacity' of a particular patch of forest will not permit the exercise of traditional rights, and thus stop access to the area in question. In this manner, a spurious concept such as 'carrying capacity' will be used to deny the legitimate and long-exercised rights of the people.

One aim of the act, then, is to closely monitor, regulate and limit people's rights in reserved forests. Simultaneously, the legislation will, in effect, sharply limit the area of village forest in which peasant or tribal communities can exercise real powers of management and use. Page 4 of the explanatory notes to the Act claims that it has "considerably" expanded the chapter on village forests (that is, in comparison with the existing Act) so as to give village-level institutions the powers to "protect or manage forests and to appropriate the forest produce therefrom". This, it says, is in conformity with the emphasis in the National Forest Policy of 1988 on "people's participations in afforestation and protection".

In his EPW article referred to above, Sharad Kulkarni is completely taken in by this claim. He says that while "village, forests were given little importance in the Act of 1927", the present draft has several provisions relating to their management, thereby underlining their management, thereby underlining their importance. He also believes that as "the Government of India is encouraging the practice of joint "forest management", it is "therefore, natural that these ideas should find place in the proposed Act". Here he appears not to have read the implications. For in point of fact, in the one respect that matters-access to land-the 1927 Act better allowed for the constitution of village forest. Moreover, far from giving expression to the forest's support for joint forest management, this act will in practice sharply limit the spread of JFM in all parts of India.

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Let me explain. While it is true that the rights and responsibilities of communities that manage village forests have been more carefully spelt out, in actual fact the proposed Act will ensure that only very limited areas will be available for possible constitution as village forests. Most crucially, the Act states that village forests cannot be constituted from reserved forests - these can only be carved out of the class of 'protected forests', which all over India are in much poorer condition. This is a truly retrograde step, for in most states the greater proportion of forest land has already been constituted as reserved forests. For India as a whole, reserved forests are almost twice as large in extent as protected forests (at 41.5 million hectares as against 23.3 million hectares), while in several states the relative figures are much more skewed. Thus in Andhra Pradesh the area of reserved forests is roughly four times as much as the area covered by protected forests, in Gujarat thirteen times as much, in Karnataka more than seven times as much, and in Uttar Pradesh a staggering thirty-four times as much. Meanwhile, there is considerable variation within each state, so that there are quite a few districts where virtually all forest land is under reserved forests.

In many parts of the country, therefore, there is little area outside reserved forests, either as protected forests or other common land, that shall be available for the formation of village forests. Moreover, this land will be of infinitely poorer quality. In other words, the Forest Department has kept the most and best land for thenselves, limited people's access to this land, and them allowed them to have very little already degraded land elsewhere.

By prohibiting the constitution of village forests from reserved forest land, this new legislation overturns a provision in the existing Indian Forest Act of 1927, wherein village forests can in theory be constituted from reserved forests. That provision has been very rarely exercised in practice, but the fact that it exists shows that at least in this respect, the colonial forest law was

actually more sympathetic to people's participation and people's rights than the Act now proposed by our independent, 'democratic and socialist' Government.

I believe this to be the most dangerous feature of the draft legislation. It must be opposed at all costs, with this provision replaced by one that allows, even facilitates, the conversion of reserved forests to village forests. A model worthy of emulation here is the Nepal Forest Act of 1993, section 25 of which states boldly that "The District Forest Officer may hand over any part of national forest to a users' group in the form of a community forest". For if the present provision forbidding the conversion of reserved forests to village forests is retained, it will deliver a body blow to programmes of Joint Forest Management or JFM. In the sal forests of West Bengal where JFM has been most successful, the land allotted for JFM has mainly been ex- zamindari forests that were since converted to protected forests. However, there are many areas, both in and outside West Bengal, where JFM can only spread and succeed if reserved forests are allotted for the constitution and functioning of Village Forest Protection Committees.

This undemocratic aspect of the proposed legislation is further heightened by the provisions that facilitate the conversion of village forests to Government-owned forests while totally disallowing the reverse. Thus Section 34(j) allows the State Government to take over village forests, while Section 35 provides for the state's acquisition of sacred groves even if these have been protected by villagers for generations These provisions are in conformity with the general thrust toward centralisation, the consolidation of the powers of government at the expense of the ordinary citizen, that is such a conspicuous feature of this Act.

This bias towards centralisation and state monopoly is manifest in other ways. For instance, the state can, if it so chooses, exercise a monopoly on any kind of forest produce, on its trade, transit, sale, etc., "whether such forest produce is grown or found

on land owned by the state government or on private land" (Section 40A). Again, individuals cannot open or operate saw mills, but the state government, if it so wishes, can (Section 40D). In general, the state has reserved to itself all arbitrary and residual powers. Thus forest officers have the powers to arrest without warrant merely on "reasonable suspicion" that someone is committing or might commit a forest offence (Section 64).

With respect to the domain of agro-forestry. too, The Act facilitates unnecessary and irksome interference by the state. Here again, there is a wide gap between what the legislation progresses and what it enables in practice. It claims it wants to facilitate tree farming, but at the same time it places numerous hurdles in the path of farmers who might actually want to plant trees on their own land. thus every tree-grower has to be registered with the Forest Department, who must be informed when trees planted and nurtured by the farmers are to be felled or sold. Moreover, the state can specify the spacement of trees planted on farm land. As none of these restrictions operate in the case of other cash crops (such as cotton or sugarcane) they will be a great deterrent to farmers who might otherwise plant trees on their land.

One additional flaw in the proposed legislation is that it discriminates or makes no allowance whatsoever for certain groups or communities which have a critical dependence on forest land or forest produce. For instance, Section 13 (3) states that anyone claiming rights in reserved forests must be from a village or town which has a "contiguous boundary with such forest". This discriminates against nomadic pastoralists who may have been grazing their flock, on a seasonal basis, for centuries in the designated forest but whose permanent' home is elsewhere. Nor have any provisions been made for the supply of raw material to artisan families who work with wood, bamboo or forest grass.

The Act also intends to "regulate, phase out or extinguish" the practice of shifting cultivation on which some tribal groups depend upon for their livelihood.

Legal experts will have to carefully go over many other provisions of the act, for instance, those dealing with the powers of forest officials and checks on their abuse, and the various punitive sanctions the Act provides for. Here I have highlighted only those features of the draft legislation that have a more general bearing on forest management. To sum up, the proposed Act is strongly oriented towards environmental protection and towards enhancing the already great powers of the state machinery. However, it remains quite insensitive to the historic rights of the millions of forest dwellers who have themselves been the victims of flawed and biased forest policies in the past. Indeed, in some respects the present draft uses 'environmental protection' as a cover, or excuse, to further deny the rights of local communities.

#### III

The draft Forest Act, if passed into law, shall represent an emphatic victory for the forces of strict conservation and strict state control. The industrial sector is apparently a loser here, except that there are strong moves to allot them land as captive plantations. Timber harvesters have asked for a total of 2 million hectares to be divided up among individual firms, who would then take possession of the land and grow their raw material on it. Although this would run counter to the 1988 National Forest Policy, which wanted industry to liaison directly with farmers for raw material, the present Minister of Environment and Forests, supported by politicians in the states, appears to be strongly in favour of handing over forest land to the private sector.

The scheme for constituting captive plantations is already far advanced. A model lease agreement, drafted by the Environment Ministry, has come into the hands of the present writer: it is a crafty, almost diabolical document, that used a legal sleight-of-hand to circumvent the provisions of the Forest Conservation Act. That Act would prohibit handing over forest

land directly to industry, so it is proposed that the land be leased to the Forest Development Corporations (FDCs) owned by State Governments. The FDCs would then sign a Memorandum of Understanding with individual firms. The land would, in a formal sense, still be under state ownership. Although the land shall not be leased to the 'user agency', the latter will be in effective control of it. The industry will provide the capital, and have first claim on the produce from 75 per cent of the area planted. The balance 25 per cent is to be planted with fuel and fodder species (though how this will be monitored we are not told).

Thus even as the proposed Forest Act will radically limit the progress of community forestry or JFM, parallel moves are afoot to give forest land on a platter to industry. The biases of the Act in favour of wildlife conservationists and scientific foresters have already been commented upon; and the creation of captive plantations will satisfy timber harvesters. The conclusion is therefore inescapable that recent state initiatives in the forestry sector wish to continue a century old process of discriminating against the rural and especially tribal poor. It is not difficult to anticipate the consequences, namely, escalating conflict between forest communities and the state.

those conflicts might yet be alleviated if the present act was redrafted and reworked to allow more for a more participatory system of forest management, in which environmental protection was made harmonious with the claims of social justice. 'Ecology and the People', 'Ecology with the People', should replace the present focus of 'Ecology versus the People'. That a healthy forest cover can be brought about only through a lost co- operation between the state and village communities was well realised by one of our early nationalist organisations, the Poona Sarvajanika Sabha. Contesting the colonial Forest Act of 1987 for its excessive reliance on state control, the sabha pointed out that the

maintenance of forest cover could more easily be brought about by

Government. If the villagers be rewarded and commended for conserving their patches of forest lands, or for making plantations on the same, instead of ejecting them from the forest lands which they possess, or in which they are interested, emulation might be evoked between different villages. Thus more effective conservation and development of forests in India might get secured, and when the villagers have their own patches of forests to attend to government forests might not be molested. Thus the interests of the villagers as well as the government can be secured without causing any unnecessary irritation in the minds of the masses of the Indian populations.

More than a century on, these sentiments remain strikingly relevant. For we are yet in search of a truly democratic system of forest management, one founded not on mutual antagonism but on a genuine partnership between state and citizen.

#### Notes

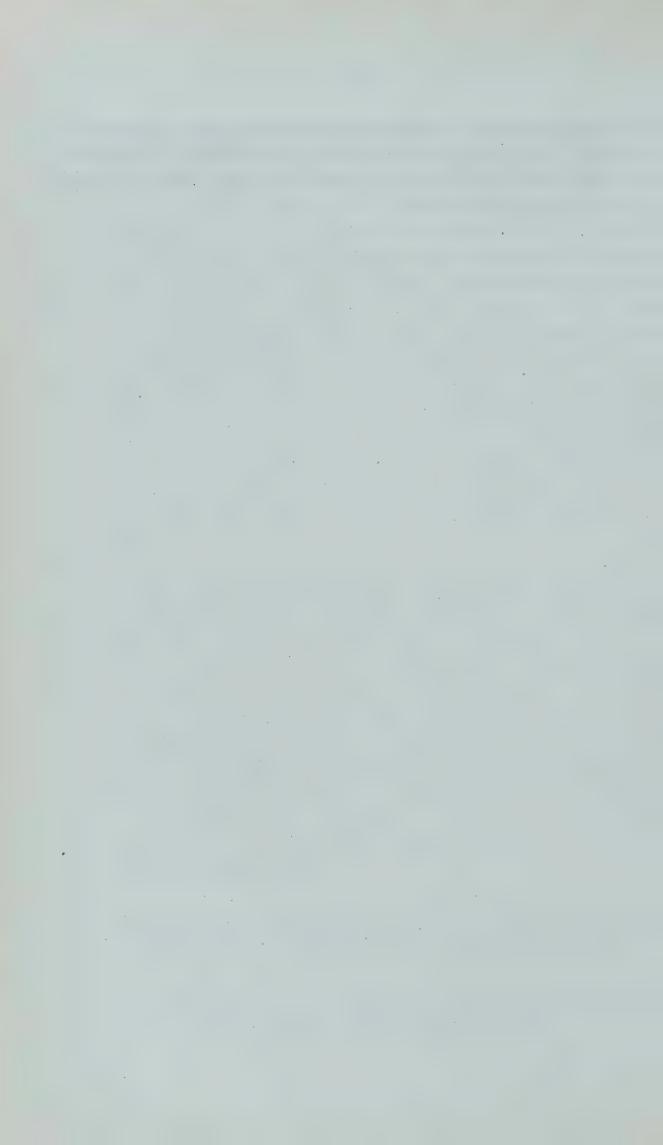
[I am grateful to Bill Burch, Jeffrey Campbell, Ashwini Chhatre, Keshav Desiraju, Walter Fernandes, Arvind Khare and Ashish Kothari for help of various kinds. A more longstanding debt is to Madhav Gadgil, in collaboration with whom several of these ideas were developed. The responsibility for their presentation remains mine alone.]

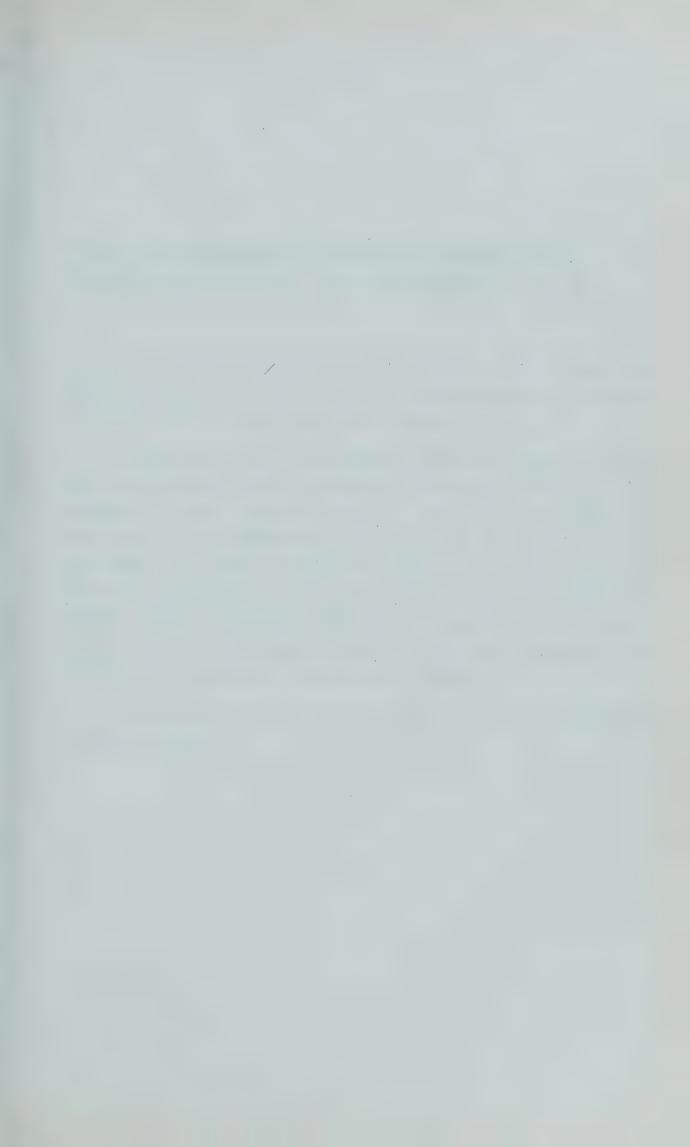
The identification of these four interest groups and the presentation of their key ideas, draws upon more than a decade of study and interaction. It is not easy to identify printed sources that authoritatively summarise and present the views of each of these groups. However, for the perspective of the rural social activists, see the essays in Walter Fernandes and Sharad Kulkarni, eds, Towards a News Forest Policy (New Delhi: Indian Social Institute, 1983), Peoples Union for Democratic Rights, Undeclared Civil War: A

Critique of the Forest Policy (New Delhi: Centre for Science and Environment, 1980). The other interest groups have not generated a comparable amount of literature, preferring to put forward their case by intensive lobbying the Government. However, the Forest Department's point of view might be found in JB Lal, India's Forests: Myth and Reality (Deharadun: Natraj Publishers, 1989); the industry's viewpoint in Murad Ali Baig, 'India's Forests', pp 15-28 in Some Aspects of Forestry in India (Bombay: Centre for Monitoring the Indian Economy, 1982); while the ideology of the wildlife conservationist has been summarised and critiqued in my 'Radical American Environmentalism and Preservation: A Third World Critique', Environmentalism ETHICS, Spring 1989. Finally a historical overview of forest policy, legislation and conflict in India is provided in Madhav Gadgil and Ramachandra Guha, This Fissured Land: An Ecological History of India (New Delhi: Oxford University Press, 1992), Chapters V to VIII.

- On JFM, see K C Malhotra and Mark Poffenbereger, editors, Forest Regeneration through Community Protection: the West Bengal Experience (Calcuta: West Bengal Forest Department, 1989); K C Malhotra, Debal Deb, M Dutta, T S Vasulu, G Yadav, and M Adhikari, Role of Non-Timber Forest Prouce in Village Ecomomy: A Household Survey in Kambai Range, Midnapore district, West Bengal (Calcuta: Indtitute for Biosocial Research and Development, 1991); Society for Promotion of Wastelands Development, Joint Forest Managemnt Update, 1993 (New Delhi: SPWD, 1993); Madhu Sarin, From Conflict to Collaboration: Local Institutions in Joint Forest Management (Working Paper No 14; New Delhi; National Support Group for Joint Forest Manaement, 1993).
- A detailed statewise breakdown is provided in Table 1.7 of The State of Forest Report 1991 (Dehradun: Forest Survey of India, 1991).
- See the new reports in The Telegraph, July 24, 1994, The Hindu, July 29,1994, and Indian Express, June 25 and July 29, 1994.

Memorial from the Poona Sarvajanik Sabha and the inhabitants of the city and camp of Poona, dated March 3, 1878, in A Proceedings Nos 43-142, March 1978, Legislative Department Records, National Archives of India.







# THE CONSERVATION OF FORESTS AND NATURAL ECOSYSTEMS ACT

An Act to provide for the restoration, conservation and management of forests and natural ecosystems and matters connected therewith and incidental thereto.

Whereas it is imperative and expedient to conserve forests and natural ecosystems to ensure environmental well being and stability, preserve natural heritage, augment and safeguard bio-diversity and fulfill the basic needs of the people on the principles of sound ecological management and optimum bio-mass production on a long term basis, as well as to revive and restore matters connected therewith or ancillary or incidental thereto, and to amend and consolidate the laws relating to the subject and to provide a uniform law thereby;

Be it enacted by Parliament in the...... year of the Republic of India as follows:

#### CHAPTER I

### **PRELIMINARY**

#### 1. Short title and extent

- (1) This Act may be called the Conservation of Forests and Natural Ecosystems Act.....
- (2) It extends to the whole of India.
- (3) It shall come into force with effect from....

#### 2. Interpretation clause

In this Act, unless there is anything repugnant in the subject or context,-

- (1) "agro forest" means any land in which agricultural crop is raised simultaneously or sequentially between rows or blocks of trees at such spacement which the State Government may, from time to time, specify;
- (2) "Biomass means the total mass or weight of an individual species, a group of species or of a community as a whole, per unit area or habitat volume.
- (3) "Cattle" includes buffaloes, bulls, bullocks, cows. oxen and other livestock such as camels, domesticated elephants, donkeys, goats, mares, mithuns, mules, pigs, sheep, yaks and also their young;
- (4) "Claimant in respect of any land means a person, claiming to be entitled to the land or any other interest therein acquired, owned, settled or possessed or purported whether under, through

or by any lease or licence under and in accordance with any provision of any enactment; (refer U.P. amendment)

- (5) "Divisional Forest Officer" means any Forest Officer in charge of any Forest Division of a Forest Officer having jurisdiction over a portion or portions of one or more such divisions when constituted into a Forest Division for any special purpose;
- (6) "Forest" includes a tract of land covered with trees, shrubs, bushes, woody vegetation or pastures, whether of natural growth or planted and existing or being maintained with or without human effort, and includes any Government land recorded as forest land in Government records and any land which the Central or State Government by notification declare to be forest for the purpose of this Act.

Explanation: The term includes watercourses, ponds, lakes, roads etc. situated within such forest.

- (7) "Forest offence" means any offence punishable under this Act or under any rule made thereunder.
- (8) "Forest Officer" means any person whom the Central or State Government or any officer empowered by State Government or any officer empowered by Central or State Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder, to be done by a Forest Officer;
- (9) "forest produce" includes-
- (a) the following whether found in, or brought from, a forest or not;

timber, charcoal, sandalwood, caoutchouc, sandalwood, catechu, wood-oil, gum, resin, natural varnish, kuth, sal seed, tendu leaves, wild animals mentioned in the schedules under the wild life (protection) Act, 1972, and products derived therefrom.

- (b) the following when found in of brought from a forest, such as,
- (i) bark, leaves, flowers, fruits and all other parts or produce not hereinbefore mentioned, from trees,
- (ii) plants not being trees, including grass, creeper, moss, lichen and all parts or produce of such plants,
- (iii) any wildlife mentioned in the Wild Life (Protection) Act, 1972 and all parts or produce of such wildlife.
- (iv) tussar cocoons, lac, shellac, honey, wax or any exudation, other than those mentioned in clause (a), from trees and other plants, whether natural or induced,
- (v) peat, humus, fallen leaves or other organic matter, soil, sand, rock and major and minor minerals including oil, and all products of mines or quarries,
- (vi) standing agricultural or horticultural crops and produce there of,
- (c) any produce as may be notified as forest produce by the Central Government from time to time;
- (10) "land" includes canals, creels, deltas, estuaries and other water channels, reservoirs, rivers, streams and lakes, whether artificial or natural, and also includes boulders and rocks. (refer to the Wild Life (Protection) Act, 1972);
- (11) "licence' means a licence granted under this act; (ibid)
- "licensee' means any person to whom a licence is granted under this Act; (ibid)
- (13) "natural ecosystem" means an interdependent system of living organisms with their physical and geographical

environment that has evolved in nature and retains its natural characteristics;

- (14) "owner" in relation to a forest includes a mortgagee in possession, lessee or other person having right to the possession and enjoyment of the forest or usufruct therefrom, and a Court of wards in respect of property under the superintendence or charge of such Court;
- (15) "person" includes a firm or a company. (refer Wildlife (Protection) Act, 1972);
- (16) "plantation" means a forest crop raised artificially, either by sowing or planting. (Refer BCFT).
- (17) "red sanders" means any part or produce of the tree known by botanical name as "*Pterocarpus santalinus* and includes billets, pieces, sawn or otherwise, chips, spentwood.
- (18) "Revenue Officer" means a Revenue Officer as defined under the relevant land revenue law;
- (19) "river" includes any stream, canal, creed or other channels, natural or artificial;
- (20) "sandalwood" means any part or produce of sandal (Santalum album) tree and includes bark, leaves, roots, billets, pieces (sawn or otherwise) chips, saw dust, spentwood, flakes and pulp thereof whether pure or mixed with other ingredients (refer Karnataka Act).
- (21) "sawing" with its grammatical variations and cognate expressions means operations of sawing, cutting, converting, fashioning of wood and includes preservation and treatment thereof, either by mechanical process with the aid of electrical or mechanical power or manually operated saws (M.P. Saw Milling Act).

- (22) "saw mill" means the plant and machinery with which and the premises (including the precincts thereof) in which or in any part of which sawing is carried on with the aid of electrical or mechanical power; (refer M.P. Kashtha Chiran Viniyam).
- (23) "State Government in relation to a Union Territory means the Administrator of that Union Territory appointed by the President under Article (refer Wildlife (Protection) Act, 1927).
- (25) "timber" includes trees when they have fallen or have been felled or uprooted and all wood whether cut up, sawn, split, fashioned or hollowed out or partially processed for any purpose or not;
- (26) "transporter" includes a person, a private agency, a Government Department, Corporation or any other agency engaged in transport of goods whether on his own behalf or on behalf of any other person. (refer J&K Wild Life Act).
- (27) "tree" includes palms, bamboos, reeds, canes, stumps, brushwood,
- (28) "urban area" means an area defined as such under the relevant laws of the States;
- (29) "usufructs" means forest produce that may be obtained from dead plants, or the produce of or harvested from living plants including grasses, sedges, forbes, herbs, creepers, vines, shrubs and trees, without their uprooting, felling, coppicing, pollarding or destroying, or otherwise debarking or damaging in such a manner so as to hamper or impair its natural growth or to threaten its survival.
- (30) "vehicle" means any conveyance used for movement on land, water or air and includes buffalo, bull, bullock., donkey, elephant, horse, mule or any other cattle used for this purpose; (refer Wildlife (Protection) Act, 1972).

(31) "Working Plan" means a detailed written scheme of the operations to be undertaken on a specified area of forest land. (Ref. New Zealand Act).

#### CHAPTER II

### RESERVED FORESTS

#### 3. Power to reserve forests

- (1) Whenever the State Government considers that any forest area or natural ecosystem by reason of its environmental, ecological, floral, faunal, geomorphological, botanical, silvicultural, zoological or hydrological association or importance is needed to be constituted as a reserved forest for the purpose of conserving, protecting, propagating or managing the forests and natural ecosystems, it may constitute such reserved forest on any land which is the property of that Government, or over which that Government have any proprietary rights, in the manner hereinafter provided.
- (2) Where the Central Government, for considerations mentioned in sub-section (1), deems it essential and expedient to constitute a reserved forest, and where the State Government has not constituted such a reserved forest, the Central Government may give directions to the State Government to constitute such a reserved forest within a prescribed time and to follow the procedure laid down in this Chapter in this regard.

#### 4. Notification to State Governments

(1) Whenever it has been decided to constitute any land a reserved forest, the State Government or an officer authorised by the State Government in this behalf, (refer Maharashtra amendment) shall issue a notification in the official Gazette

- (a) declaring that it gas been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer, hereinafter called the Forest Settlement Officer, to inquire into and determine the existence, nature and extent of any rights, alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation: For the purpose of clause (b) it shall be sufficient to describe the limits of the land by roads, rivers, ridges or other well-known or readily intelligible boundaries.

- (2) The officer appointed under clause (c) of sub-section (1) shall, ordinarily, be a person not holding any forest office except that of a Forest Settlement Officer.
- (3) A Forest Officer, hereinafter called "presenting officer" not below the rank of a Divisional Forest Officer, may represent the Forest Department at enquiries conducted under this Chapter (refer Orissa Act).
- (4) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three in which case not more than one of whom shall be a person holding any Forest office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act.

#### 5. Bar on accrual of forest rights

(1) (a) After the issue of a notification under section 4, no rights shall be acquired in or over the land comprised in such notification, except by succession or under a grant of contract in writing made or entered into by or on behalf of the Government

or some person in whom such right was vested when the notification was issued;

- (b) no house, shed or other structure shall be built or plantation formed, no fresh clearing or breaking of land for cultivation or for any other purpose shall be made on such land, not any, tree therein felled, girdled, lopped, tapped or burnt or its bark or leaves stripped off, or the same otherwise damaged, not any forest produce removed therefrom, except in accordance with rules as made by the State Government in this behalf;
- (c) no person shall set fire or kindle or leave burning any fire in such manner as to endanger or damage such land or forest produce there in.
- (2) No patta or occupancy right on such land shall be granted by or on behalf of the State Government; nor any lease be granted except in accordance with the rules made in this behalf by the State Government.
- (3) Save as otherwise provided in this Act, no Civil Court shall between the dates of publication of the notification under section 4 and of the notification to be issued under section 20 entertain any suit to establish any right in or over any land or to the forest produce from any land, included in the notification published under section 4.

# 6. Proclamation by Forest Settlement Officer

When a notification has been issued under section 4, the Forest Settlement Officer shall publish in the local language in every town and village in the neighbourhood of the land comprised, a proclamation.

(a) Specifying, as nearly as possible the situation and limits or the proposed reserved forest;

- (b) explaining the consequence which, as hereinafter provided, will ensue on the constitution of such reserved forest; and
- (c) fixing a period of not less than one month and not more than three months from date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5, within such period, either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state the nature of such claim and the amount and particulars of the compensation, if any, claimed in respect thereof.

#### 7. Inquiry by Forest Settlement Officer

The Forest Settlement Officer shall take down in writing all statements made under section 4. and shall at some convenient place inquire into all claims duly preferred under that section. and the existence of any rights mentioned under section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of the Government and the evidence of any person likely to be acquainted with the same, including the presenting officer.

#### 8. Powers of Forest Settlement Officer

For the purpose of such inquiry the Forest Settlement Officer may exercise the following powers:

(a) power to enter by himself or any officer authorised by him for the purpose, upon any land and to survey demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of

#### 9. Extinction of Rights

Rights in respect of which no claim has been preferred within the prescribed period under section 6, and of the existence of which no section 7 shall be extinguished, unless, before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficien cause for not preferring such claim within the period fixed under section 6.

# 10. Treatment of clams relating to the practice of shifting cultivation

- (1) The Forest Settlement Officer shall entertain claims to the practice of shifting cultivation in the manner hereinafter provided whenever, after hearing the presenting officer and making such other enquiries as may be deemed necessary, he is satisfied that the practice of shifting cultivation as claimed had been in existence on a regular basis in the land proposed to be made into a reserved forest during preceding twentyfive years from the date of notification under section 4.
- (2) The Forest Settlement Officer shall record a statement setting forth the particulars of the claim and of any local rule of order under which the practice is allowed or regulated, and submit the statement to the State Government, incorporating the view points of the presenting officer and the Divisional Forest Officer together with his own opinion as to whether the practice should be permitted or prohibited, wholly or in part.
- Government shall make an order permitting or prohibiting the practice wholly or in part, and where orders prohibiting the practice are issued, give directions as to the period, not exceeding three years, by which the practice of shifting cultivation is to be extinguished and the alternatives that are to be provided for rehabilitating the families that may have been practicing shifting cultivation;

- (4) In respect of the areas where the State Government have permitted the continuance of the practice of shifting cultivation, the Forest Settlement Officer shall alter the limits of the land under settlement so as to exclude such areas.
- (5) Where the State Government have prohibited the practice of shifting cultivation under subsection (3) in a given area of land under settlement, the management of such areas would be in accordance with the provisions contained in this Chapter, subject to such directions which the State Government may give for a period, not exceeding three years, till the practice of shifting cultivation is extinguished.

# 11. Power to acquire lands over which right is claimed

- (1) In the case of a claim to a right in or over any land, other than right of way or right of pasture or right to forest produce or a watercourse, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part, after considering the particulars of such claims and the objection, if any, of the presenting officer or the Divisional Forest Officer (refer Orissa Act).
- (2) If such claim is admitted, in whole or in part, the Forest Settlement, Officer shall either
- (ii) come to an agreement with the owner thereof for the surrender of his rights, or
- (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.
- (3) For the purpose of acquiring such land-
- (a) the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894;

- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Forest Settlement Officer with the consent of the claimant or the Court as defined in the said Act, or with the consent of both the parties, may award compensation in land, or partly (refer Andhra Act, section 10)
- (4) The provisions of sub-section (3) shall apply also when the Forest Settlement Officer proceeds to acquire any land in consequence of any order passed on appeal or revision under this Act (refer U.P. Amendment).

# 12. Order on claims to pasturage or forest produce, a right of way or water course

In the case of a claim to pasturage or to forest produce, a right of way or a watercourse, the Forest Settlement Officer shall pass an order admitting or rejecting the same, in whole or in part, after considering the view point of the presenting officer, or of the Divisional Forest Officer (refer Orissa Act); provided that the Forest Settlement Officer shall not admit any claim, in whole or in part, unless after considering the evidence provided to him under section 7, he is satisfied that such claim is within the limits of the carrying capacity of the forest or natural ecosystem, as the case may be, and conforms to the principles of sustained yield on a long term basis and would not lead to any ecological degradation or over-use of the land. Where the land in question is already degraded, the Forest Settlement Officer shall take due cognizance of the need to allow such land to revive and be restored to its potential productive capacity.

#### 13. Record to be made by Forest Settlement Officer

The Forest Settlement Officer, while passing any order under section 12, shall record, so far as may be practicable.-

- (a) the name, father's name, caste, residence and occupation of the claimant; and
- (b) the designation, position and area of all fields or groups of fields, and building, if any, in respect of which the exercise of such rights is claimed.

#### 14. Record where claim is admitted

If the Forest Settlement Officer admits, whole or in part, any claim under section 12, he shall record the extent to which the claim is so admitted, specifying as far as may be practicable-

- (a) in the case of right of way, by whom they may be enjoyed, the width of the way, and whether for vehicular traffic or for men and cattle only, and the conditions, if any, attached to the right;
- (b) in case of pasturage, the number and description of cattle which the claimant is, from time to time, entitled to graze in the forest, the season during which such pasturage is permitted, and any conditions attached to the rights;
- (c) in the case of a forest produce, the quantity of timber or other forest produce, which the claimant is entitled to take or receive, and whether or not such forest produce other than timber or firewood, may be sold or bartered and such other particulars as sold or bartered and such other particulars as may be necessary in order to define the nature, incident and extent of the right and the manner in which the forest produce shall be removed;
- (d) in the case of water course, by whom and for what purpose the water course may be utilized and any condition attached to its use (refer Karnataka Act).

# 15. Exercise of rights admitted

- (1) After making such record the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure continued exercise of the claims so admitted.
- (2) For this purpose the Forest Settlement Officer may.-
- (a) provide some other reasonably convenient right of way of watercourse, or (refer Karnataka Act)
- (b) set out some other tract of sufficient extent and in a locality reasonably convenient for the purpose of admitted claims to pasturage and forest produce and record an order conferring upon the claimants the right to pasturage or to forest produce, as the case may be, to the extent so admitted; or
- (c) so alter the limits of the proposed reserved forest so as to exclude tracts over which rights of way or water course extend, or to exclude forest land of sufficient extent and in a locality reasonably convenient, for the purpose of the claimants with regard to pasturage or other forest produce; or (refer Karnataka Act)
- (3) The Forest Settlement Officer shall not, except with the prior approval of the State Government, admit claims to pasturage or to forest produce in the proposed reserved forest if-
- (i) the claimant is a person of a village or town which does not have a contiguous boundary with such forest; or
- (ii) the claimant is a beneficiary of any village forest or part thereof so contituted under Chapter IV of this Act.

#### 16. Commutation of rights

If on the representation of the presenting officer, or the Divisional Forest Officer, the Forest Settlement Officer is satisfied that the exercise of any private right, whether individually or collectively, is inconsistent with the conservation of the proposed reserved forest, he shall proceed to acquire such right and shall, subject to such rules as the State Government may make in this behalf, commute such rights by payment to such persons of a sum of money in lieu thereof or by the grant of land, or in such other manner as he deems fit (refer Orissa Act).

# 16.A. Copy of order passed under Section 11, Section 12, Section 15, or Section 16.

A copy of every order passed under section 11, section 12 section 15 and section 16 shall be furnished to the claimants by the Forest Settlement Officer and also to the presenting officer and the Divisional forest Officer.

### 17. Appeal from the orders of Forest Settlement Officer

- (1) Where a claim is rejected wholly or in part, the claimant may, within ninety days from the date of the order, prefer an appeal to the District Court in respect of such rejection only. The time taken for obtaining copies of the order appealed against shall be excluded in computing the period of ninety days.
- (2) Wherever a claim is rejected in the first instance wholly or in part, a like appeal may be preferred on behalf of Government by the presenting officer or the Divisional Forest Officer or other parson generally or specially empowered by the State Government in this behalf (refer Kerala Act).
- (3) Provided that the State Government may establish a Court (hereinafter called the Forest Court) and all such appeals shall be presented to it.

#### 18. Appeal to the High Court

(1) The State Government or any person objecting to any order of the District Court or the Forest Court, as the case may be, in an appeal under section 17may, within a period of ninety days from the date of that order, appeal against such order to the High Court:

Provided that the High Court may admit an appeal preferred after the expiration of the period of ninety days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within said period.

- (2) An appeal under sub-section (1) shall be in the prescribed form and shall be verified in the proscribed manner and shall be accompanied by a fee of two thousand rupees.
- (3) On receipt of an appeal under sub-section (1), the High Court may, after giving the parties a reasonable opportunity of being heard, either in person or by a representative-
- (a) confirm or cancel the order of the District Court or the Forest Court, as the case may be, appealed against; or
- (b) set aside such order and remand the case to the District Court or the Forest Court, as the case may be, for decision after such further enquiry as may be directed; and
- (c) pass such orders as it may deem fit.
- (4) Every order passed in appeal under this section shall be final.

#### 19. Pleaders

The State Government, or any person who made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement Officer or the Appellate Court, in the course of any inquiry or appeal under this Act.

#### 20. Notification declaring forest reserved

- (1) When the following event occurred, namely-
- (a) the period fixed under section 6 for preferring claims has elapsed and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement Officer;
- (b) if any such claims have been made, the period limited by section 17 for appealing from the order passed on such claims has elapsed and all appeals (if any) presented within such period have been disposed of by the appellate authority; and
- (c) if the period prescribed under sub-section (3) of section 10 for extinguishing the practice of shifting cultivation has elapsed;
- (d) all lands and buildings (if any) to be included in the proposed reserved forest, which the Forest Settlement Officer has under section 11 elected to acquire under the Land Acquisition Act, 1894, have become vested in the State Government under section 16 of that Act, the State Government or an officer authorised in this behalf by the State Government shall publish a notification in the official Gazette, specifying clearly, according to boundary marks, erected or otherwise, the limits of the land which is to be reserved, and declaring the same to be reserved from a date fixed by the notification, subject to the exercise of rights, if any, specified in such notification; (refer Kerala Act, Maharashtra Amendment).
- (2) From the date so fixed such land shall be deemed to be a reserved forest and requisite alteration shall be made in the revenue records and maps.
- 21. Publication or translation of such notification in neighbourhood

The Divisional Forest Officer shall, before the date specified in the notification issued under section 20, cause a translation thereof into the local language to be published at a conspicuous place in every town and village in the neighbourhood of the reserved forest and also in such other manner as may be prescribed (Refer Orissa Forest Act).

Power of State Governments to redefine the limits of reserved forests certain cases

- 21.A.(1) Where the description of the limits of any reserved forest notified under section 20 is defective or is not clear in reference to existing facts, the State Government or an officer authorised by the State Government in this behalf may within a period of one year from the date of notification under section 20, by notification in the official Gazette, declare their intention to redefine the limits of such reserved forest so as to remove the defect or to make the description clear in reference to existing facts. Such notification shall specify as nearly as possible the corrections which are proposed to be effected to the limits of the reserved forest.
- (2) On the issue of a notification under subsection (1) the Divisional Forest Officer shall publish in the Gazette, and in such other manner as may be prescribed in that behalf, a notice-
- (a) specifying the corrections proposed by the notification under sub-section (1); and
- (b) stating that any objections which may be made in writing to the Divisional Forest Officer within a period of thirty days from the date of publication will be considered by him.
- (3) After the expiry of the period referred to in clause (b) of sub-section (2) and after considering the objections, if any, received by him, the Divisional Forest Officer shall submit to the State Government through the Head of the Department of Forests the

record of the Proceedings held by him together with a report thereon.

- (4) The State Government may, after considering the report so submitted and the remarks, if any, of the Head of the Department of Forests, by notification in the Gazette redefine the limits of the reserved forest, as proposed by the notification under sub-section (1) with such modifications as deemed fit or without any modifications.
- (5) Save as provided in this section, it shall not be necessary to follow the procedure laid down in sections 4 to 19 before issuing a notification under sub-section (4). (Refer Kerala Act, Karnataka Act).

# 22. Power to revise arrangement made under section 15

The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 and direct that any one of the proceedings specified in section 15 be taken in lieu of any other such proceedings, or that the rights admitted under section 12 be commuted under section 16.

## 22.A. Power to review and commute rights

Notwithstanding anything contained in the foregoing section, the State Government may at any time after the publication of the notification under section 20, review any or all the rights in respect of pasturage to forest produce admitted in the notified reserved forests with regard to carrying capacity of such forests and commute those to such an extent as it may consider necessary to prevent degradation of the said reserved forest.

23. No right acquired cover reserved forests except as herein provided

No right of any description shall be acquired in or over a reserved forest except under a grant or contract in writing made by or on behalf of the State Government or by or on behalf of some person in whom such right was vested when the notification under section 20 was published, or by succession from such person;

Provided that no lease shall without the previous sanction of the State Government, be granted for any land included within the reserved forest and every lease granted without such sanction shall be null and void;

Provided further that the State Government shall not sanction any such lease without the prior approval of the Central Government (Refer Kerala Act).

## 24. Rights not to be alienated without sanction

- (1) Notwithstanding anything contained in section 23, no right to pasturage or forest produce continued under clause (d) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the State Government.
- (2) No forest produce in the exercise of any right for bonafide domestic use and recognised as such on orders passed under this Chapter shall be sold or bartered.
- (3) Any person selling or bartering any forest produce in contravention of this section shall be liable to punishment prescribed in section 78 (refer Karnataka Act).

# 25. Power to stop ways and water courses in reserved forests

The Divisional Forest Officer may stop any public or private way or watercourse in a reserved forest, provided that a substitute

for the way or watercourse so stopped already exists or has been provided or constructed by such officer in lieu there of.

# 26. Acts prohibited in reserved forests

- (1) Any person who -
- (a) contravenes the provisions of clause (b) or clause (c) of sub-section 5; or
- (b) sets fire to a reserved forest or in contravention of any rules made by the State Government in this behalf or other wise kindles any fire, or leaves any fire burning in such manner as to endanger such a forest;

or who in a reserved forest-

- (c) kindles, Peeps or carries any fire in without taking adequate precautions to prevent its spread, except at such seasons as the Forest Officer may notify in this behalf; or
- (d) trespasses or permits cattle to trespass and pastures cattle; or
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber; or
- (f) fells, girdles, lops, taps or burns any tree or strips of the bark or leaves from, or otherwise damage the same; or
- (g) quarries any major or minor mineral or burns lime or charcoal, or collects. damages, subjects to any manufacturing process. or removes forest produce; or
- (h) clears or breaks up any land for cultivation or for any other purpose or cultivates or attempts to cultivate any land in any other manner; or
- (i) in contravention of any rules made in this behalf by the State Government or otherwise, fishes or poisons water; or

- (j) damages, alters or removes any wall, ditch, embank, fence, hedge or railing; or
- (k) knowingly receives or has in possession any forest produce illicitly removed from a reserved forest shall be, in addition to such compensation for damages caused to the forest as the Court may direct to be paid, liable to punishment prescribed in section 78.
- (2) Nothing in this section shall be deemed to prohibit:
- (a) any act done by permission in writing of the Forest Officer, or under any rule made by the State Government; or
- (b) the exercise of any right under clause (d) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.
- (3) Whenever fire is caused willfully or by gross negligence in a reserved forest, or theft of forest produce or grazing by cattle occurs on such a scale as to be likely to imperil the future yield of such forest, the State Government may, notwithstanding that any penalty has been inflicted under section 78, direct that in such forest or any portion thereof the exercise of all rights of pasturage or to forest produce shall be restricted or suspended for such period as it may deem fit.
- (4) Where a person contravenes the provision of clause (a) or clause (g) or clause (h) of subsection (1), without prejudice to any other action that may be taken against him under other provisions of this Act, forest officer not below the rank of a Ranger, or a police officer not below the rank of a Sub- Inspector, or a Revenue Officer not below the rank of a Tahsildar, may evict the person from the forest or the land, pertaining to which the contravention has taken place and removed any building or other construction or anything grown or deposited on it.

(5) Where any agricultural or other crop is grown on the land in contravention of sub-section (1) or likewise any building or other structure is set up or such land, such crop, building or other structure shall, without prejudice to any other action that may be taken against the offender under other provisions of this Act, be liable to confiscation by an order of the Divisional Forest Officer.

# 27. Power to declare forest no longer reserved

(1) The State Government may, by notification in the official Gazette, direct that from a date fined by such notification any land or any portion therefore reserved under this Act shall cease to be a reserved forest;

Provided that no such notification shall be issued unless a clearance has been obtained from the central Government or any officer so empowered by the Central Government in this behalf;

Provided further that no such clearance shall be granted by or on behalf of the Central Government for regularisation of unauthorised occupation of any reserved forest or portion thereof. if such occupation is of a period after coming into force of this Act without a resolution to that effect being passed by both the Houses of Parliament (Refer section 28 Karnataka Forest Act).

- (2) Form the date so fixed, such forest or portion there of shall cease to be reserved, but the rights, concessions (if any) which have been extinguished therein shall not revive in consequence of such cessation.
- (3) Whenever any reserved forest or any portion thereof cease to be reserved forest by virtue of a notification issued under sub-section (1) the State Government shall, as far as practicable, constitute other lands equal in area to the reserved forest go notified to be a reserved forest in accordance with the provisions of this Chapter. (Refer Orissa Act).

## 27 A. Compliance of Central Government directives

Where the Central Government has given directions to the State Government to constitute a reserved forest in accordance with sub-section (2) of section 3 and the same has not been implemented by the State Government, the Central Government may direct the stoppage of all exploitation by the State Government of the area in question till such time as the directions of the Central Government are carried out. Anyone who violates such directions or abets in the violation of the same shall be liable for punishment as contained in section 78.

## CHAPTER III

# PROTECTED FORESTS

#### 29. Protected Forests

(1) Whenever the State Government consider that any forest land or natural ecosystem by reason of its environmental, ecological, floral, faunal, ecological or hydrological association or importance needs immediate protection to maintain these characteristics such forest land natural eco- system as a reserved forest under provisions contained in Chapter II. thereby leopardising its protection;

or when the State Government considers that unrestricted access to any land is detrimental to the fulfillment of biomass needs of certain communities on a sustained yield basis and owing to existing usage, concessions, privileges, claims or any other reason it is not feasible to constitute such land a village forest under the provisions contained, Chapter IV;

the State Government may constitute such forest land or natural ecosystem or any land which is not included in a reserved forest but which is the property of that Government or over which that Government have proprietary rights;

a protected forest in the manner hereafter provided.

(2) Where the Central Government for considerations mentioned in sub-section (1), deems it essential and expedient to constitute a protected forest and where the State Government has not constituted such a protected forest, the Central Government

may give directions to the State Government to constitute such a protected forest within a prescribed time and to follow the procedure laid down in this Chapter in this regard.

- (3) The State Government or, any officer authorised in this behalf, may declare by notification in the official Gazette the provisions of this Chapter applicable to any land which is not included in a reserved forest, but which is the property of Government, or over which that Government have proprietary rights.
- (4) The lands comprised in such notification shall be called a protected forest.
- (5) No such notification shall be made unless the nature and extent of the rights of Government and of private persons and village communities in or over the land are recorded shall be presumed to be correct until the contrary is proved;

provided that, if in the case of any land the State Government thinks that such inquiry and record are necessary but that they will occupy such length of time as in the meantime to endanger the forest or the natural ecosystem or biomass or unduly delay the ecological revival of such land, the State Government or, any officer authorised in this behalf, may, pending such inquiry and record declare such land to be protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

- (6) Not withstanding anything contained in sub-section (5) no claim of right to pasturage or to forest produce shall be admitted in such protected forest or part thereof, whenever it is preferred by a person who is a beneficiary from a village forest or part thereof so constituted under Chapter IV of this Act.
- (7) Section 28 taken after this Chapter and renumbered as section 34.AA.

# 30. Power to issue notification reserving trees etc.

The State Government or an officer authorised in this Behalf, may by notification in the official Gazette;

- (a) declare any tree or class of trees or other forest produce in a protected forest to be reserved from a date fixed by the notification;
- (b) declare that any portion of such land specified in the notification shall be closed to grazing and removal of any forest produce for such term as the State Government deems fit for plantation or natural growth and revival of the forest or natural ecosystem and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of land be sufficient and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed (Reference Orissa Act);
- (c) prohibit, from a specified date, the quarrying of any major or minor mineral or the burning of lime or charcoal or the collection or subjection to any manufacturing process or removal of any forest produce in any such protected forest and the breaking up or clearing of an area for cultivation, for building, for herding cattle or for any other purpose, of any land in such protected forest;
- (d) where shifting cultivation is being practised, prescribe a minimum cycle for the same on land with an overall gradient less than thirty degrees and extinguish it on land with gradient of more than thirty degrees, provided that admitted claims of shifting cultivators shall not be extinguished until they are provided a reasonable opportunity for settled cultivation or other suitable vocation.
- 31. Publication or translation of notification in neighbourhood

The Divisional Forest Officer shall cause a translation into the local language of every notification issued under section 30, to be affixed in a conspicuous place in every town and village in the neighbourhood of the protected forest comprised in the notification.

## 32. Protection, management, etc. of protected forests

Subject to all rights now vested in individuals and communities by law, custom or usages having the force of law, the State Government may provide for protection, management and regulation of access to such forests by individuals or communities (reference A.P. Forest Act)

- 33. Penalties for acts in contravention of provisions of this Chapter or the rules made thereunder
- (1) Any person who commits any of the following offences, namely:-
- (a) fells, girdles, lops, taps, burns any tree reserved under section 30 of this Chapter or strips off the bark or leaves from. or otherwise damages a tree which would jeoardise its growth or existence or removes any such tree or other forest produce there from;
- (b) quarries any major or minor mineral, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest produce contrary to any prohibition made under suction 30;
- (c) contrary to prohibition under section 30, breaks up or clears for cultivation or any other purpose or cultivates, or attempts to cultivate any land in any other manner;
- (d) sets fire to protected forest, or kindles a fire without taking adequate precautions to prevent its spread;

- (e) leaves burning any fire kindled by him in the close vicinity of such forest;
- (f) permits cattle to graze in the area closed under clause (b) of section 30 or causes damage in such area, forest produce therein through such grazing in such area, or to any tree reserved under clause (a) of section 30, or to the forest produce therefrom;
- (g) infringes any rules made under clause (c) of sub-section (2) of section 76;
- (h) knowingly receives or has in possession any forest produce illicitly removed from a protected forest;

shall be, in addition to such compensation for damages caused to the forest as the Court may direct to be paid, liable to punishment prescribed in section 78.

- (3) Whenever fire is caused willfully or by gross negligence in a protected forest, or theft of forest produce or grazing of cattle occurs on such a scale as to be likely to imperil the future yield of such forest, the State Government may (notwithstanding that any penalty has been inflicted under section 78) direct that in such forest or any portion thereof the exercise of all rights of pasturage or to forest produce shall be restricted or suspended for such period as it may deem fit.
- (4) Where a person contravenes the provision of clause (b) or (c) of sub-section (1), without prejudice to any other action that may be taken against such person under the provisions of this Act-
- (i) a Forest Officer not below the rank of a Ranger; or
- (ii) a Police officer not below the rank of a Sub-Inspector; or
- (iii) a Revenue Officer not below the rank of A Deputy Tehsildar,

may evict the person from the forest or the land pertaining to which the contravention has taken place and remove any building or other construction or anything grown or deposited on it.

- (5) Where any agricultural or other crop is grown on the land in contravention of clause (c) of sub-section (1) or any building or other structure is set up on such land, such crop. building or other structure, notwithstanding any penalty that may be inflicted for the same under this Act, shall be liable to confiscation by an order of the Divisional Forest Officer.
- (6) Nothing in this section shall be deemed to prohibit:-
- (a) any act done with the permission in writing of the Forest Officer, or in accordance with the rules made by the State Government under section 76; or
- (b) the exercise of any right, unless suspended under sub-section (3), under section 29, or created by grant or contract in writing made by or on behalf of the Government.

# 34. Power to declare forests no longer protected

(1) The State Government may, by notification in the official Gazette, direct that, from a date fixed by such notification any land or any portion thereof protected under this Act shall cease to be a protected forest;

Provided that no such notification shall be issued unless a clearance has been obtained from the Central Government or any officer so empowered by the Central Government in this behalf;

Provided further that no such clearance shall be granted by or on behalf of the Central Government for regularisation of unauthorized occupation of any protected forest or portion thereof, if such occupation is of a period after coming into force of this Act, without a resolution to that effect being passed by both the Houses of Parliament. (refer section 28 of Karnataka Forest Act)

- (2) From the date so fixed such forest or portion thereof shall ceases to be a protected, but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.
- (3) Whenever any protected forest or any portion thereof ceases to be a protected forest by virtue of a notification issued under sub- section (1), the State Government shall, as far as practicable, constitute other lands equal in area as protected forest in accordance with the provision of this Chapter.
- from time to time but before expiry of every ten years, shall review as which of the protected forests notified under section 29 need to be constituted as reserved forests and forward his recommendations in this regard to the State Government. On receipt of such a proposal, the State Government, within a period of six months, shall direct either to start proceedings as per the provisions of Chapter II for constituting reserved forests in such protected forests or part thereof as deemed fit, or direct the Head of the Forest Department of the State concerned to review his proposal, in respect of such protected forest or part thereof as may be considered necessary, and record the reasons therefor, or decide not to proceed according to such recommendations for the reasons to be recorded in this respect;

Provided that whenever the State Government disagrees with the recommendations of the Head of the Forest Department, in whole or in part, the reasons there for shall be forwarded to Central Government.

# 34 A. Certain forests deemed to be protected forests

The following classes of forests mentioned in the Acts shown against them shall be deemed to have been declared as protected forest under this Chapter with effect from the date of

coming into force or this Act subject to the same rights, privileges or concessions, if any, in favour of any person as were in force immediately before the said date:

(i)	Chapter IV of Karnataka Forest Act. 1963	"District Forest"
(ii)	Chapter IV of Nagaland Forest Act, 1968	Unsettled Forests under the title "General Protection of Forest & Forest Produce"
(iii)	Chapter III of Kerala Forest Act, 1961	Forests under the title "Protection of Land at the disposal of Government not included in reserved forest"
(iv)	Chapter IV of Tamil Nadu Forest Act, 1892	Forests under the title "Of control over forest and land at the disposal of Government"
(V)	Chapter III of the Sikkim Forest, Water Courses and Road Reserve (Preservation Protection) Act, 1988	

Explanation: Any question as to the existence or extent of any right or concession referred to in this sub-section shall be determined by the State Government, whose decision, given after such enquiry, if any, as it deems fit, shall be final (reference U.P. Amendment, section 20. A).

## CHAPTER IV

# VILLAGE FORESTS

# Formation of village forests

34.AA 1(a) Not withstanding anything contained in any other Act rules or regulations, whenever the State Government consider that any land, other than a reserved forest notified under chapter II of this Act, which is the property of that Government or over which that Government has proprietary rights, or any land at the disposal of the village community has access by way of any right, concession or privilege, needs to constituted as village forest with a view to conserve or develop such land or to manage it on the principles of sustained biomass production for the collective benefit of the said village community.

The State Government or any officer authorised by it on this behalf, may constitute, land as village forests, and manage it through the village community, in the manner hereinafter provided.

- (\* Village Forests has been numbered as section 28 under Chapter III in the existing Act)
- (b) The land so notified shall be called a village forest and the notification so made shall specify the limits and extent of such forests.
- (c) Prior to the notification of the village forest in accordance with clauses (a) & (b) above. The State Government, or an officer authorised by it in this behalf, shall determine the extent and nature of the rights of the Government or of private persons or of

villages other than the village to whom the said forest is to be entrusted for management, and shall record the same. The village shall be represented by its Panchayats or any other local body representing the village, hereinafter both referred to as a local body.

The said notification of the village forest shall not be made unless the rights of the other villages, if any, are either extinguished or where this is not possible, two or more villages mutually agree to share the usufructory rights over the area in question in accordance with the provisions of sub clause (e). Rights of individuals, if any, shall be either extinguished or recorded and provided in such manner as may be prescribed in the rules made for this purpose by the State Government.

- (d) Subject to the rights of the Government, individuals or any other village as determined in accordance with the provision of the clause (c) above, the village concerned shall enjoy the usufructs, fuel wood and other benefits, rights and other privileges in accordance with a management plan prepared by the local body in consultation with the representatives of the Forest department of the State designated for this purpose. The management plans shall also prescribe the duties of the villagers in matters relating to the protection and management of such forests.
- (e) The village community individually, and the local body collectively, shall restrict the usage of the village forest to the extent and nature provided for in the said management plan and shall prevent its violation by other village communities and individuals who have no rights and claims to the said village forest expressly recognised in the said management plan.
- (f) The management plan shall also recognise the usufructory rights, including that over grass and fuelwood of any individual of the community who has been responsible for the specific raising and/or protection of the said forest produce.

- (g) In such protected forest where the proprietary rights vest with the State Government, these shall continue to vest with the same.
- (h) The State Government or an officer authorised by it on this behalf, or the local body shall evict any individual who commits an encroachment over the village forest.
- (i) The local body may levy a compensation, not exceeding three thousand rupees, on any person who violates any of the provisions of the rules made under section 76 for carrying out the provisions contained in this chapter; provided that when such act or omission also violates any other provision of this act, or the rules made thereunder, the local body shall report the matter to the nearest forest officer.
- it on this behalf, is satisfied that local body or the residents of the village are either unable to protect the village forest or to abide by the management plan prescribed for it, the State Government or the authorised officer, as the case may be, may pass orders taking over the management of the forest by the State Government, provided that the State Government, or the authorised officer, as the case may be, shall hear the villagers or the local body concerned as the case may be prior to passing such an order.
- (k) If a violation of the provisions of the management plan or any other act illegal under the provisions of this Act or the rules made thereunder, comes to his notice, a forest officer may first bring it to the notice of the local body for levy of compensation as prescribed under clause (i) and in case, he shall initiate proceedings in accordance with the provisions of this Act.
- (2) (a) The local body shall -
- (i) as far as possible, afforest all land under its charge and embankments of roads, canals, railway lines, tanks and the like:

- (ii) regulate the grazing of cattle on such land under afforestation for such period and in the manner deemed fit and shall make every possible effort to improve such land by reseeding of grasses, planting of fodder or in any other appropriate manner:
- (iii) as far as possible, encourage plantation of trees and groves on the private land holdings by the respective owners and raise nurseries to provide seedings and other planting material for the same, on such terms as may be deemed fit.
- (b) (i) The local body, subject to such rules as may be made by the State Government for this purpose, may assign part of the village forest or the land under its charge, to individuals for afforestation and protection on mutually agreed terms and conditions; including enjoyment of usufructs and other forest produce;

provided that preference shall be given in such allotment to the landless, marginal and small farmers of the village in question in that order;

provided further that no such assignment shall in any way alienate the rights of the State Government, if any, over such land.

- (ii) Whenever, part or whole of the assigned land is needed for public purpose the same may be taken over by the Collector, Divisional Forest Officer, or the local body, as the case may be on payment of compensation in accordance with the norms fixed by the State Government for this purpose.
- (iii) Whoever being an assignee in the village forest or community land, as the case may be, in the manner hereinbefore prescribed, brings such land under any use other than afforestation and grass and fodder cultivation, shall be liable to punishment prescribed in section 78.

Notwithstanding any penal action that may be taken against such assignee, he shall be summarily evicted by the local body, a Forest Officer, a Police Officer or a Revenue Officer so authorised by the State Government in this behalf.

- (iv) Whenever an assignee fails to protect the land assigned to him or does not comply with the terms which he had agreed to in exchange of such assignment, the local body, or any Forest or Revenue Officer duly empowered by the State Government on this behalf, may take back such land after giving such assignee reasonable opportunity of being heard.
- (3) (a) The local body may levy a special tax to provide funds for protection and development of village forests and community lands and for afforestation and grass and fodder development on private land holdings.
- (b) The State Government shall establish a special fund, hereinafter called the village forest development fund, and shall contribute to such fund annually an amount which shall not be less than five percent of the gross revenue of the Forest Department of the State and twentyfive percent of the forest development tax, levied under section 39 A, accrued during the preceding year.
- (c) The State Government shall, from the village forest development fund, advance loans to the local body managing a village forest for afforestation and development of such village forest according to need, and taking into consideration the capacity of the local body concerned to make good use of the loan. The loans so advanced shall be recovered from the local body concerned from the revenue received through the sale of forest produce harvested from the Village Forest.
- (4) The State Government may declare all or any of the provisions of Chapter III, to be applicable to village forest;

Provided that wherever the village forest has been declared out of any protected forest, all the provisions of Chapter III shall apply, a priori, to such village forest or part thereof to the extens it is covered by the protected forests;

## CHAPTER V

# THE CONSERVATION OF FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

# 35. Conservation of forests not owned by government

- (1) Except in respect of a plantation, registered under section 38 A or otherwise, the State Government may, by notification in the official Gazette, regulate or prohibit in any forest or natural ecosystem, not being the property of such Government or over which it has no proprietary rights;
- (a) the breaking up or clearing of land for cultivation or any other purpose;
- (b) setting fire to the vegetation;
- (c) clearfelling or over-exploitation which endangers such forest or natural ecosystem;

when such regulation or prohibition appears necessary for any of the following purposes;-

- (i) for protection against storms, wind, floods and avalanches;
- (ii) for the preservation of banks of watercourses, wetlands, or the prevention of land slips or of the formation of ravines and torrents, or the protection of land against erosion, siltation or accretion of debris;

- (iii) for the maintenance of water supply in springs, rivers, tanks, irrigation works, reservoirs and hydroelectric works; (reference Karnataka Act).
- (iv) for the protection of roads, bridges, railway and other lines of communication;
- (v) for preventing destruction of forests and natural ecosystems and for promoting conservation and development of the same.
- (vi) for safeguarding grazing areas of cattle and the habitat of wildlife;
- (vii) for preservation of tree groves associated with religious sentiment or places of worship.
- (2) No notification shall be made under sub-section (1) until after the issue of notice to the owner or claimant of such forest or natural ecosystem, as the case may be, by the Divisional Forest Officer calling on him to show cause within a reasonable period, to be specified in such notice, why such notification should not be made and until objections, if any, and any evidence he may produce in support of the same have been heard be an officer authorised by the State Government in this regard.
- (3) All objections filed by the owner or the claimant, as the case may be, under sub-section (2) together with the findings of the authorised officer relating thereto, shall be referred to the State Government for orders. On receipt of such reference and after hearing such further cause as the owner or the claimant may have to show, the State Government shall pass orders as it deems fit.
- (4) In any case in which the order under sub-sections (1), is, in the opinion of the State Government, likely to disturb substantially the owner's or claimant's rights in the forests or natural ecosystem, as the case may be, to which such order or

action relates. State Government shall award to such owner or claimant such compensation as it may deem equitable;

Provided that any compensation so paid shall be deducted from the amount payable to the owner under the provision of the Land Acquisition being the provisions of the Land Acquisition Act, 1894 (Act I of 1894), in the event of action being taken under the provisions of section 37, or the profits payable under Section 36, as the case may be.

(5) All the notices or orders or requisitions referred to in this Chapter shall be served on the owner or the claimant, as the case may be, in the manner provided in the Code of Civil Procedure, 1908, for the service of summons and shall also be published in the manner prescribed for this purpose.

When a notice, order or requisition has been served or published as aforesaid, any person acquiring thereafter the right of ownership of or claims to the forest or natural ecosystem, as the case may be, shall be bound by the notice as it had been served on him as an owner or claimant and he shall accordingly comply with the order, notice, requisition and notification.

(6) Any person contravening any or the provisions of a notification issued under sub-section (1) shall, be liable to punishment prescribed in section 78.

## 38. Power to assume management of forests

(1) Whenever it appears to the State Government that the taking over of the management of any particular forest other than a plantation, registered under section 38 A or otherwise, is necessary or expedient in public interest, particularly with a view to ensure its conservation as a forest (reference U.P. Amendment, section 38 H).

or in case of neglect of, or willful disobedience to, any regulation or prohibition under section 35 (notwithstanding any punishment that may have been imposed for the same under section 78).

the State Government may, by notification in the official Gazette, take over management of such forests or natural eco-systems, as the case may be, for all of the said purposes for such period as may be specified in the notification.

- (2) No notification under sub-section (1) shall be issued until-
- (a) after the issue of a notice by the Divisional Forest Officer to the claimant or owner of the forest or natural eco-system specified therein be not taken over; and
- (b) objections, if any, have been heard and disposed of by the authorised officer in accordance with the procedures laid down by the State Government in this regard.
- (3) The management of forest or natural ecosystem, as the case may be, by the State Government shall be deemed to commence from the date of publication of the notification under sub-section (1) in the official Gazette, and the State Government shall appoint a Forest Officer to be in charge of the same. For the purpose of its protection and management the State Government may declare in such notification that all or any of the provisions of this Act shall apply to such forest or part thereof, or to any forest produce therefrom (Refer Karnataka Act).
- (4) (a) The State Government shall, during the period of management by it pay, at prescribed interval, to the owner or the claimant, as the case may be, compensation which shall be either an annuity mutually agreed or the aggregate of
- (i) an allowance calculated on the total area of the forest or natural ecosystem, as the case may be; and

- (ii) the net profits, if any, accruing from the working and management of the forest or natural ecosystem.
- as per clause (a) and the items of expenditure and income to be taken into account for computing net profits, shall be specified in the notification issued under sub-section (1) and the notice issued to the owner or the claimant, as the case may be, under sub-section (2), provided that
- (i) the expenditure during any year or part thereof and the interest thereon, if exceeding the total income during the corresponding period, may be debited against future surplus income;
- (ii) expenditure shall not be debited against allowance payable on the land under forest or matural ecceystem;
- (iii) in the ereat of total expenditure e ceeding total income over the entire period of take over of management, the owner or the claimant, the owner or the claimant, as the case may be, shall not be liable to make up such losses;
- (iv) the value of any forest produce removed or any advantage gained by the owner or claimant, as the case may be, after the date on which such forest is taken over for management shall be debited as expenditure (Refer M.P. Amendment and Karnataka Act).
- (d) During the period of management the State Government shall receive all revenues accruing from the working and management of the forest and shall pay the whole expenditure incurred in the working and management of the same (Refer Karnataka Act).

# 36 A. Consequences of assumption of management

On the assumption of management of any forest or natural ecosystem, as the case may be, by the State Government under section 36, the following consequences shall ensue-

- (a) all legal proceedings pending, and all processes, execution or attachments in force in respect of debts and liabilities enforceable against the forest or natural ecosystem or any part thereof shall be suspended, and so long as the management by the State Government continues no fresh proceedings, processes, executions or attachments shall be instituted, issued, enforced or executed in respect thereof;
- (b) so long as the management by the State Government continues, the owner or the claimant, as the case may be, shall not be competent-
- (i) to enter into any contract with respect to the forest or natural ecosystem, as the case may be, or any part thereof or any forest produce thereof;
- (iii) to grant valid receipts of the rents or profits rising or accruing therefrom.
- (c) So long as the management by the State Government continues, subject to the orders of the State Government, no person other than the Forest Officer placed in charge of the forest or natural ecosystem, as the case may be, shall be competent to do the acts referred to in sub-clauses (i), (ii) and (iii) of clause (b);
- (d) Subject to the orders of the State Government, the Forest Officer placed in charge of the forest, or natural ecosystem shall, during the period of management of the same, have all the powers which the owner thereof might have exercised for the purpose of management and shall receive and recover all rents and profits due in respect of the property under management; and for the said

purposes of the owner, the Forest Officer shall be competent to exercise any power which he can exercise in respect of a reserved forest or any other provisions under this Act (Refer Karnataka Act).

## 36 B. Termination of management

- (1) If the State Government decides to terminate the period of management of any forest or natural ecosystem it shall, by notification, published in the official Gazette, or in such other manner as may be prescribed declare such termination; and thereupon possession of the same shall be given to the owner or claimant, as the case may be, together with any sum of money which may be standing to the credit of such owner.
- (2) All acts done or purporting to be done by the Forest Officer in respect of any forest or natural ecosystem placed under his management during the period of such management, shall be binding on the owner of such forest or any person to whom possession of the forest has been delivered under this section.
- (3) After the period of termination of management of any forest or natural ecosystem, notwithstanding anything contained in the Indian Limitations Act, 1980, but subject to any law which may then be in force, all proceedings, processes, executions or attachments suspended under-clause (a) of section 36A shall stand revived and may be proceeded, and all proceedings, processes, executions or attachments stayed from the stage at which they were stayed (Refer Karnataka Act).

## 37. Expropriation of forests in certain cases

(1) In any case under this Chapter in which the State Government considers that, in lieu of placing the forest or the natural ecosystem, as the case may be, under the control of a

Forest Officer, the same should be acquired for public purposes, the State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.

(2) The owner of any forest or natural ecosystem, as the case may be, comprised in any notification under section 35, or if there be more than one owner therein may, at any time require that such property shall be acquired for public purposes, and the State Government shall acquire the same accordingly.

## 38. Protection of forests at the request of owners.

- (1) The owner of any forest or natural ecosystem, as the case may be, or if there be more than one owner hereof, the owners of majority of shares therein may, with a view to the formation or conservation of such forest or natural ecosystem, represent in writing to the Forest Officers their desire-
- (a) that the same be managed on their behalf by the Forest Officer as a reserved or a protected or a village forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such property; or
- (c) that the same be managed, subject to the control of the Forest Officer by a person appointed by themselves and approved by the Divisional Forest Officer (Refer Karnataka Act, section 36).
- (2) In either case, the State Government may, by notification in the official Gazette, apply to such forest or natural ecosystem, as the case may be, provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicant.

#### 30 A. Exemption to registered free growers

(1) Any owner may register himself as a tree grower with the Divisional Forest Officer, in respect of such land on which he has

raised plantations in the manner as may be prescribed by the States Government.

- (2) Before registering an owner as a registered tree grower the Divisional Forest Officer may call for such information from the owner and conduct such investigation as may be deemed necessary.
- (3) After ascertaining the requisite details and on completion of necessary investigation, the Divisional Forest Officer may register the owner as a tree grower on such conditions as may be considered necessary;

provided that whenever Divisional Forest Officer decides not to register the owner he shall communicate in writing the reason therefor to the owner;

provided further that, the State Government may prescribe certain eligibility criteria, such as, minimum number of trees or minimum area of plantation or both, for the purpose of registration under this section.

(4) (a) Notwithstanding anything contained in any other law for the time being in force but subject to prohibitions contained in sections 40A and 40E, 40E-II, 40E-III, 40E-III, 40E-IV and 40E-VII of this act, any registered tree grower may use as he likes the forest produce of his plantation (for which he has been so registered) and may fell the trees therefrom provided that;

when such felling requires or or permission of any authority or officer of the State Covernment concerned under any other Act or rules made thereunder, the said grower shall inform the Divisional Forest Officer and the nearest forest Offices in writing and under due acknowledgement his intention to do so, giving details or the trees to be felled;

provided further that such intimation should be received by the Divisional Forest Officer at least thirty days of advance of the date of commencement of such felling and it shall be deemed as felling permission for a period not exceeding sixty days from the date when it is received by the Divisional Forest Officer.

- (b) Whenever being a registered tree grower under this section intends to transport forest produce from the plantation for which he has been so registered, may intimate in writing to the Divisional Forest Officer and the nearest Forest Officer authorised to issue permits for transit of forest produce under section 41 of this Act or the roles made thereunder, his intention to do so., giving the description of the forest produce, date, time, route and destination of transport. The Divisional Forest Officer shall, with convenient dispatch, cause to deliver a transit permit if required under section 41 of this Act or the rules made thereunder. If the Divisional Forest Officer or any person authorised by him on this behalf, fails
- (i) to deliver the said permit; or
- (ii) to intimate the reasons, in writing, as to why such permit cannot be issued; or
- (iii) to intimate the reasons, in writing, as to why the said produced cannot be transported;

within a period of thirty days from the date when such intimation was received by him;

notwithstanding anything contained in sections 41 and 41B of this Act or the rules made thereunder, the said tree grower may proceed to transport the said forest produce in the manner described in the written intimation given by him under this clause. A proof of acknowledgement of such intimation given not later than thirty days preceding the date of transport, by either of the said offices shell be deemed a valid transit pass for the purposes of transport of the said forest produce in accordance with the

provisions contained in section 41 and 41B of this Act and the rules made thereunder to the extent the forest produce under transport conforms to the description contained in the said intimation.

- (c) The State Government may extend facilities and technical advice to the registered tree growers as may be deemed fit.
- (d) The Divisional Forest Officer after recording the reasons in writing, may cancel any registration under this section, provided that no such cancellation shall be ordered unless the registered tree grower is intimated of the same at least thirty days in advance and is given an opportunity of being heard.

## 38 B. Assistance for plantations on private lands

- (1) Any owner, who wishes to avail of assistance for raising plantations on the land owned by him may intimate in writing to the Divisional Forest Officer his intention to do so, giving the details of the land to be brought under plantation, the species to be planted and other relevant information and state the assistance required by him for this purpose.
- (2) On receipt of such written request the Divisional Forest Officer shall cause such investigation as he may deem necessary regarding the title of the land, suitability of the same for raising plantations and the quantum and type of assistance for the same.
- Officer may, subject to the availability of finances and other inputs, accept the proposal of the owner and offer to provide requisite financial or other assistance including providing planting material on such terms and conditions as may be agreed mutually. For this purpose the owner shall enter into an agreement with the Divisional Forest Officer who shall execute the same on behalf of the State Government. Whenever the Divisional Forest Officer is of the opinion that assistance required by the owner cannot be

rendered he may inform the cryma, in writing, giving reasons, therefor.

- (4) The State Government may provide loans or subsidy for raising of plantation, their management and harvest and prescribe the method of recovery.
- (5) the owner shall neither alienate title over the land nor shall transfer the ownership of plantations to any one except in the manner provided for in the agreement.
- (6) The owner shall be entitled to the forest produce including usufructs or the sale proceeds therefrom as the case may be, in accordance with the provisions contained in the agreement.

## 38 D. Tree plantations not to attract ceiling laws

Notwithstanding anything contained in any other law for the time being in force, any land which is utilized by the owner for the purpose of plantation of tree species or for raising grass and other fodder, shall be deemed to be plantation forest and shall not be included in his agricultural land holding for the purpose of ceiling laws;

provided that such exemption shall be applicable for only registered tree growers and it shall be subject to a certificate by the Conservator of Forests that the land has been so used;

provided further that the provisions of this section shall not apply to plantation of horticultural species, i.e., tea. coffee, palm, rubber and any other species as notified in the official Gazette by the State Government from tome to time.

## 38 E. Plantations by individuals on Government land

(1) Whenever the State Government considers it expedient to involve individuals in afforestation of any land which is the property of the said Government or over which the said

Government has proprietary rights, it may, in accordance with the rules made in this behalf, assign the same or part thereof to an individual; provided that no reserved or protected forest shall be assigned to any person for this purpose and for assignment of village forest the provisions of clause (b) of sub-section (2) of section 34 AA shall be followed.

- (2) The assignee who raises such plantation on any such Government land shall be entitled to usufructs therefrom and to such other forest produce from intermediate and final harvest as the State Government may provide for.
- (3) Whoever being an assignee under this section contravenes any term or condition under which he has been assigned the land or fails to protect or afforest the land in the manner prescribed by an officer authorised in this behalf by the State Government, shall forfeit all his claims on the plantation or the forest produce therefrom. He shall not be entitled to any compensation for any expenditure or in lieu of any other work which he might have done in such land.
- (4) Any order under sub-section (3) shall not be passed unless the assignee has been given an opportunity of being heard by an officer not below the rank of a Collector or the Divisional Forest Officer, as the case may be.
- (5) Whenever any land assigned under this section is required by the Central or State Government for any public purpose, the same shall be taken over by an officer authorised for this purpose by the State Government on payment of such compensation as may be considered adequate to defrav all the expenditure borne by the assignee and the labour inputs incurred by him or on his behalf.

## 38 F. Shifting cultivation

- (1) Whenever the State Government, for the purposes specified in sub-section (1) of section 35, considers it expedient that any land owned by an individual or a community over which shifting cultivation is taking place, needs to be protected it may declare the same as agro-forests in the manner hereinafter provided.
- (2) (a) Whenever it has been decided to constitute an agro-forest, the State Government shall issue a notification in the official Gazette declaring its intention to do so, specifying as clearly as possible, the situation and limits of such land.
- (b) On issue of such notification, but before expiry of ninety days of the same, the State Government shall appoint a Settlement Committee consisting not more than seven persons (of which majority of the members shall not be holding any office of the State Government), to enquire into the claims of individuals or communities, and determine their rights, privileges or concessions alleged to exist in respect of the practice of shifting cultivation.
- (c) The Settlement Committee, after hearing the claims in an assembly of the claimants or in any other appropriate manner as may be prescribed, shall decide and record the rights, privileges or concessions, as the case may be, of individuals, provided that whenever the majority of any community decide to retain such rights, privileges or concessions collectively, the Settlement Committee shall leave the settlement of the claims of the individuals to the discretion of the community.
- (d) The Settlement Committee shall forward its award to the State Government; including the dissenting views, if any.
- (e) The State Government, subject to such review as it may deem necessary, shall announce the award of the Settlement Committee in the assembly of claimants or in any other manner

deemed fit within a period of one year from the date of receipt of the same from the said Committee.

(f) When the claims have been enquired in the manner provided in the foregoing clauses, the State Government shall issue a notification in the official Gazette declaring constitution of an agro-forest in such area of the land for which all claims to the practice o shifting cultivation have been settled.

Such notification shall, as far as may be practicable, specify;

- (i) requisite details to establish the identity of the persons or communities, as the case may be, in respect of whom rights, privileges and concessions to the practice of shifting cultivation have been admitted;
- (ii) outer boundaries of the agro-forest;
- (iii) description and boundaries of such area awarded to each individual or community, as the case may be, provided that whenever delineation of boundaries of individual awardees or apportioning of the area under agro-forest amongst individuals is likely to take considerable time for want of relevant land records, maps or other such reasons, the State Government may empower a representative body of claimants to look into such matters and delineate individual holding in such agro-forest in the manner prescribed. Such a representative body shall include Revenue officers designated for this purpose by the State Government.
- (3) Notwithstanding anything contained in sub-section (1) and sub-section (2), the State Government shall not constitute any agro-forest in an area having overall gradient of more than thirty degrees.
- (4) The Central or the State Government may, in accordance with the provisions of the rules made in this behalf;-
- (i) prescribe that an agro-forest shall be managed according to a management plan which may be prepared by the concerned

Panchayat, Village Council, or other local body or any official of the State Government nominated for this purpose in consultation with the villagers practicing shifting cultivation;

- (ii) issue guidelines for the preparation of management plan or for practicing shifting cultivation in the manner prescribed therein;
- (iii) prescribe the minimum period of rotation of shifting cultivation requiring clearing of trees;
- (iv) provide financial and technical assistance subject to such terms and conditions as may be deemed necessary.
- (5) Any person who has a right, privilege or concession to practice shifting cultivation in an agro-forest and who has received any financial assistance from the Central or the State Government for development of such an agro-forest after its being so notified shall not alienate his right, privilege or concession. Whenever he desires to transfer such right, privilege or concession, as the case may be, he shall do so only to the State Government or such other person as the State Government may authorise on this behalf. The State Government may accept such transfer after compensating the concerned person in the manner prescribed in this behalf.
- (6) The State Government may, by rules made in this behalf empower village panchayat, village council or any other local body to discharge such function as may be deemed necessary to manage agro-forests for production of bio-mass on a sustainer basis and in conformity with ecological conservation. Likewise, the State Government may authorise the village panchayat, village council or any other local body to levy compensation, not exceeding an amount of two thousand rupees, for contravention of any provisions of the rules made under this section.
- 38 G. Prohibiting felling, cutting, damaging destroying any class of trees in any urban or rural area

I. Subject to the provisions contained in section 38A, and save as provided in section 40E, the State Government may, by notification in the official Gazette, prohibit from the date specified in such notification, cutting, damaging, destroying, felling or removing any class or kind of trees in any urban or rural area or part thereof, other than a reserved protected and village forest, except under the provisions made in this Chapter or any rules made thereunder.

# 38G. Establishment Tree Authority

- II. The State Government may by notification in the official Gazette, constitute a Tree Authority for each such notified urban or rural area. The duties of the Tree Authority shall consist of-
- (i) preservation of existing trees in its area of jurisdiction and restricting or prohibiting their felling;
- (ii) providing for planting trees in the places of trees permitted to be felled and in areas where there is not sufficient tree growth; and
- (iii) to mobilize and enlist public support for planting and preservation of trees.

### 38 G. Tree Authority fore urban area

- III. (1) The Tree Authority for urban area may consist of the following members;
- (i) The Mayor, President or Head of the Municipal Corporation, Council or Notified Area Committee, as the case may be.
- (ii) The concerned or nearest Divisional Forest Officer or his nominee.
- (iii) The Horticulture Officer having jurisdiction over the area, if any.

- (iv) The Municipal Commissioner or the Chief Executive Officer or the Administrator as the case may be.
- (2) The State Government may appoint the Mayor or President or Head of the Municipal Corporation, Council or Notified Area Committee, or the Municipal Commissioner, or the Chief Executive Officer, or the Administration of the same as its Chairman.
- (3) The Tree Authority may co-opt in such manner and for such period as it may determine, not more than three individuals or representatives or non-official organisations having special knowledge and practical experience in the field of planting and preservation of trees and one member of the Municipal Corporation, Council Committee.

### 35 G. Tree Authority for rural area

- IV (1) The State Government may constitute a Tree Authority for rural area consisting of the following members;
- (i) the concerned Conservator of Forests of the Circle or his nominee;
- (ii) the concerned Deputy Commissioner or collector of the District or his nominee;
- (iii) the concerned Superintending Engineer of the Public Works and Irrigation Departments of the State Government;
- (iv) Chairman of the Zilla Parishad or his nominee
- (v) the concerned District Horticultural Officer.
- (vi) President, Taluka Development Board concerned;
- (vii) two non-official members.
- (2) The State Government may nominate either the Conservator of Forests or the Deputy Commissioner (or the Collector) as the Chairman.

(3) The Tree Authority so constituted may co-opt in such manner and for such period as it may determine, not more than two individuals or representatives of non-official organizations having special knowledge and practical experience in tree planting and their preservation.

# 38 G. Appointment of Tree Officer

As soon as may be after these provisions are brought into force in any urban or rural area, the State Government may appoint one or more as Tree Officer or Officers in any urban or rural area. The State Government may appoint one or more as Tree Officer or Officers for the urban area or specified rural area, as the case may be.

# 39 G. VI. Restrictions on felling of trees

(1) From the date on which these provisions are brought into force in any urban or rural area, notwithstanding any custom, usage, contract or law for the time being in force, subject to provisions contained in section 38A, no person shall fell trees of any specified species or cause any such trees to be felled in any land whether in his ownership or occupancy or otherwise, situated within that urban or specified rural area, except with the previous permission of the Tree Officer;

Provided that such restrictions shall not apply to any reserved, protected or village forest.

(2) On receipt of application from any person to fell any standing tree or to cut, remove or otherwise dispose of fallen trees of any specified species, the Tree Officer shall after making such enquiry as deemed fit either grant permission, in whole or in part, or refuse the permission applied for.

Provided that no such permission shall be refused if the tree (i) is dead, diseased or wind fallen, or (ii) has silviculturally matured or (iii) constitutes a danger to life and property, or (iv) is substantially damaged or destroyed by fire, lightning, rain or other natural causes, or (v) constitutes an obstruction to traffic.

(3) Permission granted under sub-section (2) may be subject to the condition that the applicant shall plant another tree or trees of the same or other suitable species on the same site or premises, and where this is not possible, within thirty days from the Tree Officer, within thirty days from the date the tree is felled or within such extended time as the Tree Officer or Tree Authority may allow.

# 38 G. Appeal

- (1) When any decision is given or order is made under section 38G, VI by the Tree Officer, an appeal shall lie with the Tree Authority whose decision shall be final.
- (2) The Tree Authority shall decide the appeal within sixty days from the date of its receipt, after giving a reasonable opportunity, to the appellant of being head. If no order is passed within this period, it will be deemed that the appeal has been allowed.

#### 38 G. What constitutes an offence

VIII. Whoever fells any tree, causes any tree to be felled in his private land in urban or specified rural area without permission of the Tree Officer in contravention of the provisions contained in sections 38G, I, 38G, VI, 38G, VII and the rules made under sections 38G, XII, (both inclusive), fells any tree or causes any tree to be felled, in any urban or specified rural area to which these provisions are applicable or fails to plant trees in lieu of the trees so felled as per the conditions of the felling permission created to him shall be liable to punishment as provided in section 78.

# 38 G. Tree Authority and Tree Officers empowered to compound

IX. The Chairman or the Tree Officer or the Tree Authority may also compound the offence after receiving compensation for an amount not exceeding the value of tree felled or/and cost of planting tree or trees ordered to be planted but not planted, and

on realisation of the compensation fee and may release the tree and other property that may release the tree and other property that may have been seized.

#### 38 G. Seizure

X. When the Tree Officer has reason to believe that an offence under the provisions of sections 38G, I to 38G, XII (both inclusive) and the rules made thereunder, has been committed in respect of any tree, he may seize the tools. ropes, chains, boats, vehicles, cattle or any other article used for the commission of the said offence, along with tree or part thereof which has been severed from the ground or the trunk, as the case may be, and apprehend and deal with the accused and the property, if any seized, as per provisions contained in Chapter IX of this Act.

# 38 G. Exemption Granted by State Government

XI. The State Government may exempt any class of persons or any class of trees in any locality from the provisions of sections 38G, I to 38G, XII (both inclusive) and the rules made thereunder, wholly or in part.

### 38 G. Operation of other laws not barred

XII. Nothing contained in sections 38G, I to 39G, XII (both inclusive) be deemed to prevent any person from being prosecuted under any law for any act or omission which constitutes an offence under those provisions, or from being liable under such other law to higher punishments or penalty than that provided by these provisions of this Chapter or the rules made thereunder.

### CHAPTER - VI

# THE DUTY ON TIMBER AND OTHER FOREST PRODUCE

# 39. Power to impose duty on timber and other forest produce

- (1) The Central Government may levy a duty in such a manner, at such places and at such rates as it may declare by notification in official Gazette, on all timber or other fores produce-
- (a) Which is produced in the territories to which this Ac extends, and in respect of which the Government has any right;
- (b) which is brought from any place outside the territories to which this Act extends.
- (2) In every case in which such duty is directed to be levied valorem the Central Government may fix by like notification the value on which such duty shall be assessed.
- (3) All duties on timber or other forest produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the State Government, shall be deemed to be and to have been duly levied under the provisions of this Act.
- (4) Notwithstanding anything in this section the State Government may, until provisions to the contrary is made by Parliament, continue to levy an duty which it was lawfully levying under this section as then in force.

Provided that nothing in this subsection authorises the levy of any duty which as between timber or other forest produce of the State and similar produce of a locality outside the State discriminates in favour of the former, or which, in the case of timber or other forest produce of localities outside the State, discriminates between timber or other forest produce of one locality and similar timber or other forest produce of another locality,

# 39 A. Levy of duty in respect of forest produce disposed of by the State Government

- (1) Notwithstanding anything contained in this Act or the provisions of any other Act in respect of forest produce disposed of by the State Government by sale or otherwise, the State Government, may levy a duty, hereinafter called forest development tax, at a rate not exceeding fifteen per cent of the value assessed or the amount of consideration paid therefor.
- (2) The forest development tax when levied shall be collected along with such other consideration from such date and at such rate as the State Government may declare by a notification in the official Gazette.
- (3) the said forest development tax shall be in addition to and not in lieu of, any duty or tax payable in respect of such produce under any other law in force.
- shall be deposited in a special fund and shall not be a part of the Consolidated Fund of the State. The amount so received shall be used exclusively for re-afforestation; forest protection and other ancillary purposes connected with tree planting, forest development programmes and the welfare sections of the people dependent on forest produce for their livelihood (Refer Maharashtra Act, pt 831).

- (5) (a) Notwithstanding anything contained in this section, no forest produce which is sold to any person for his bonafide domestic use under any right, privilege or concession under the provisions of Chapter II and III.
- (b) Subject to such conditions, if any, as it may impose, the State Government may if it is necessary to do so in public interest, by notification in the official Gazette exempt any specified class of sales from payment of the whole or any part of the forest development of the whole or any part of the forest development tax, from the date of publication of the said notification or such other date as may be specified therein. (Maharashtra Act, pt 832).

# 40. Limit not to apply to purchase money or royalty

Nothing in this Chapter shall be deemed to limit the amount, it any chargeable as purchase money or royalty on any timber or other forest produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

# Chapter VII

# THE CONTROL OF TRADE, POSSESSION AND TRANSIT OF TIMBER AND OTHER FOREST PRODUCE AND ITS PROCESSING

# 40 A. Regulation of trade in forest produce and its possession

- (1) Save as otherwise provided in this chapter, the Central or State Government may, by notification issued in the official gazette, prescribe that in the specified area from such date or dates as may be specified in the said notification, no person other than
- (a) The Central or State Government; or
- (b) an officer of the Central or State Government or an agency or organisation or individual authorised, in writing in this behalf; shall purchase, transport or sell any forest produce or any class of forest produce specified in the notification, or transport or deal in any manner in such forest produce or possess the same in such quantity, except as may be specified in the said notification.

Explanation I: Purchase of the aforesaid forest produce from the Central Government or any of those authorised by the Central or State Government, shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation II: Transport of the foresaid forest produce by any person having purchased them from the Central or State Government or the from those authorised by the Central or State

Government, to any place outside the area for manufacture or further disposal, shall not be deemed to be a transport or sale in contravention of the provisions of this section, provided the same is not in contravention of any of the provisions of this Act.

(2) The State Government may, by notification in the official gazette and for the reasons to be stated therein, rescind any existing contract, lease, or agreement or other instrument that may be in existence for the purchase, sale, gathering or collection of the notified forest area, whether such forest produce is grown or found on land owned by the State Government or on private land;

provided that claims, if any, on account of such notification shall be considered and settled by the State Government and in case of any dispute, the matter shall be referred to arbitration proceedings in accordance with the manner prescribed.

Grant of licence and supply of forest produce to industries.

- 40.AI (a) Not withstanding anything contained in any other Act or rules made thereunder, the State Government shall not, without the prior approval of the Central Government, grant a licence, permit or permission to start, or enter into an agreement, or renew an agreement, or any reserved or protected forest, to any industry that may be established after the commencement of this Act and which is engaged in the manufacture of paper and pulp; oil and other by-products from seeds of forest origin; Katha and other products out of Khair trees; resin, turpentine and other products out of resin; plywood, veneer and matchsplints out of timber; tannins out of bark of trees, or any other products (from forest produce) which may be notified by the Central Government, from time to time.
- (b) No permission shall be given by the Central Government under this section unless the availability of the forest produce and the matters ancillary to it are inquired and availability of the forest produce for such industry is ensured.

### 40 A.II Revision of current leases or agreements

Not withstanding anything contained in any other Act or rules made thereunder, or in an agreement, lease, permit or permission with respect to sale or supply of forest produce to any industry, the Central or State Government may, after recording the reasons in writing, revise the existing terms and conditions of, or add new clauses or conditions to any lease, agreement, permit of permission with regard to:

- (i) quantity of forest produce to be made available in any year;
- (ii) the rate at which the forest produce is being or to be, supplied in any particular year or group of years;
- (iii) The total period of the lease, agreement, permit or permission;
- (iv) the size and the shape of the forest produce:

# 40.AA. Support price of purchase of forest produce

- (1) The Central or State Government may, by notification in the official gazette, fix the minimum support price of purchase for any forest produce so notified therein and specify the price, place and mode of purchase, as well as the required quality specifications and other criteria that would qualify for such purchase.
- (2) The State Government shall purchase, subject to the conditions prescribed, such forest produce at the purchase centres specified for the same during the normal hours of business on payment of prices fixed for such produce.
- (3) Whenever a notification under sub-section (1) is issued by the Central Government and the State Government, for the reasons to be stated therefore, on request and on payment of the

purchase price and handling charges, cause such purchase to b made on behalf of the Central Government.

- 40 B. Power to regulate manufacture of charcoal and othe articles based on forest produce etc.
- (1) Save as otherwise expressly provided for this purpose under this Act, the Central or the State Government may regulate manufacturing of any article requiring forest produce in such area as may be notified in the official gazette, and make rules for the same.
- (2) Not withstanding anything contained in any other law for the time being in force, no person shall manufacture within a reserved or protected forest or within two kilometers from the limits of such forest -
- (i) Charcoal;
- (ii) Lime;
- (iii) Bricks:
- (iv) Catechu;
- (v) Catechin; and
- (vi) any other product which requires timber, firewood or any other forest produce for its manufacture as may be notified by the Central or State Government in the official gazette;

except under authority of a licence granted by the Divisiona Forest Officer for the purpose and subject to such conditions as may be prescribed in the said licence.

(3) No claims on account of damages caused by notification under sub-section (1) or by prohibition under sub-section (2) shal be entertained nor any damages shall be paid for the same (Reference M.P. Sawmill Act)

(4) The State Government may lay down procedures for issue of licence, hearing and disposal of appeals and any other matter ancillary to the provisions of this section.

# 40 C. Regulation of the sale of timber and establishment of sale depots

The State Government may, by notification in the official gazette, regulate the sale of timber and the establishment of sale depots for such timber and make rules for the same.

# 40 D. Power to prohibit and regulate cetaceans saw mills and saw pits

(1) No person shall establish a saw mill or saw pit from the date of coming into force of this Act;

or operate by saw mill or saw pit already in existence from a date to be notified by the State Government or after expiry of sixty days from the date of coming into force of this Act, whichever is earlier;

except under the authority and subject to the conditions of a licence granted in that behalf by an officer, hereinafter called licensing office, authorised by the State Government.

- (2) (a) The Central the State Government may by notification, for reasons to be mentioned, declare any area to be a prohibited area for such period as may be stipulated in the said notification.
- (b) During the period any area continues to be a prohibited area under clause (a) the following consequences shall ensue in that area;
- (i) no licence shall be granted for establishment of a saw mill or a saw pit;
- (ii) no licence shall be renewed during that period and all the existing licences shall stand revoked;

- (iii) a saw mill or a saw pit situated therein shall cease to operate and keep its sawing operations closed;
- (iv) no claim on account of damages because of closure shall be entertained nor any damages shall be paid (Refer M.P. Saw Milling Act).
- (3) The Head of the Forest Department of the State may, by a general or special order notified in the official gazette, declare any area to be closed for establishment of any new mill or for expanding any existing saw mill, for a specified period not exceeding ten years, from the date of notification.
- (4) nothing contained in this section shall prevent the State Government from establishing and/or operating saw mills or saw pits under the direct control of the Forest Officer of rank not less than that of Ranger.

Provided that where such sawing is carried out in a prohibited area declared by the Central Government, the State Government shall obtain prior approval of the Central Government.

- (5) (a) Subject to restrictions contained in sub-sections (2) and (3) no order refusing grant of licence or to renew the same under this section shall be passed unless the applicant has been given reasonable opportunity of being heard and the reasons for refusal are recorded.
- (b) Any person aggrieved by the refusal of the licensing officer to grant or renew a licence may, within thirty days of the service on him of the order of such refusal, appeal to the authority prescribed by the State Government, whose decision shall be final and binding (Refer M.P. Saw Milling Act).

Provided that it shall be lawful for the State Government to review and revoke any licence for good and sufficient reason.

# 40 E. Sandalwood and red sanders wood; Presumption of owner ship

- (1) Notwithstanding anything contained in any law, contract, grant or other instrument o judicial decimal decision, no person shall uproot, fell or judicial decision, no person shall uproot, fell or sell sandal or red sanders tree except in accordance with the provisions of this Act.
- (2) Exploitation and sale: Where in any proceedings taken under this Act a question arises whether any sandal or red sandal tree is the property of the State Government, it shall until the contrary is proved, be presumed to be the part of a sandal or red sanders tree which was the exclusive property of the State Government, and in case of any prosecution the burden of proving the contrary shall lie on the accused.
- (3) The Head of the Forest Department of the State may cause any sandal or red sanders tree growing in such lands to be cut, uprooted and sold on behalf of the private land holders or other persons in accordance with such rules as may be prescribed.

# 40 E-I. Responsibility of occupants and holders of lands for the preservation of sandal and red senders trees.

- (1) Every occupant or holder of land shall be responsible for the due preservation of all sandal and red sanders trees growing thereon, and shall, in the event of any damage to any such tree from whatever cause or its theft, at once report such fact to the nearest Forest Officer or police officer.
- (2) Any occupant or holder who fails to report any such case of damage or theft as aforesaid, or to prove to the satisfaction of such officer, not lower in rank than the Divisional Officer, that such damage or theft was not caused either by his own act or by any other person by his instigation, or with his connivance, shall, notwithstanding any other penalty to which he may be liable, be

liable to pay to the State Government such compensation of account of such injury or theft as the Divisional Forest Officer madeem reasonable.

Provided that the Forest Officer aforesaid may, in cases i which he is satisfied that the person responsible for the ac neglect, default, instigation, or connivance resulting in the damage or theft was any tenant of the occupant, or holder or any other person holding under, or through an occupant or holder, direct that such tenant or other person shall primarily be liable for the compensation and shall be proceeded against in the first instance for the recovery thereof.

**Explanation:** The word damage in this section includes the lopping of branches of trees resulting in material injury to them (Karnataka Forest Act, 85).

# 40 E-II. Possession and processing of sandalwood or red sander to be covered by licence. (1) No person shall-

- (i) have in his possession any quantity of sandalwood i excess of five kilograms, and in the case of red sandalwood i excess of twenty kilograms for bonafide domestic use;
- (ii) sell or attempt to sell sandalwood or red sanders wood their bark, dust, roots, chips, particles, extracts or any other derivative;
- (iii) disintegrate, refine, distil or redistill or attempt to do an of the above by mechanical, chemical or any other process sandalwood or red sanders wood or its by-products;
- (iv) carve, manufacture or attempt to carve or manufacture are article out of sandalwood or red sanders wood or its by-product

except under the authority and subject to the conditions a licence granted in this behalf by the Divisional Forest Office having jurisdiction over the area.

Provided that for a period of sixty days from the date when this Act has come into force, and thereafter for the period during which the application is pending for consideration, it shall be deemed as if such person was granted a licence under this Act (refer M.P. Saw Milling Act, section 4).

Provided further that the Divisional Forest Officer may refuse to grant or renew licence to any applicant in respect of whom he is satisfied by reason of his conviction for an offence under this Act or the rules thereunder, or the previous cancellation or suspension of any license granted thereunder, or the contravention of any of the requirements as to the possession of sandalwood or red sanders wood or for any other reason which may be prescribed, that he is not a fit person to whim a licence should be granted or renewed under this section, and every such order shall be communicated to the applicant or licensee, as the case may be, as soon as possible.

#### 40 E-III. Declaration of sandal wood and red senders

Any person possessing any sandalwood or red sanders wood prior to the commencement of this Act which is in excess of the quantity mentioned in section 40.E-II (1) shall declare his stock before the Divisional Forest Officer or any other officer authorised by the State Government in this behalf, within sixty days from the date of commencement of this Act.

# 40 E-IV. Restriction on sale of sandalwood or red sanders wood

No State Government shall sell any sandalwood or red sanders wood to any person other than a licensee under this Act.

### 40 E-V. Powers to cancel or suspend licence

The Divisional Forest Officer may cancel or suspend any licence granted under section 40.E-II if it appears to him, after

giving the holder thereof an opportunity of being heard, that he has contravened or failed to comply with any of the provisions of this Act or rules made thereunder, or any of the terms or conditions of the licence (Tamil Nadu Forest Act, 36C).

# 40 E-VI. Appeal

Any person aggrieve by the decision of the Divisional Forest Officer refusing to grant, or renew or canceling or suspending a licence under this chapter may, within such time as may be prescribed, appeal to the Conservator of Forests who may pass such order as he may deem fit, after recording the reasons therefor.

Any person aggrieved by an order of the Conservator of Forests in appeal preferred above may, within such time as may be prescribed, prefer a second appeal to the Head of the Department of Forests who may pass such order as he deems fit, after recording the reasons therefor, (A.P.F.A, section 35) and the decision thereon shall be final.

# 40 E-VII. Accounting of stock of wood by any manufacturer of distiller

All sandalwood or red sanders wood of a dealer or manufacturer of red sanders wood, sandalwood article or oil at any time, shall be properly accounted for and all relevant evidence, documents, order and certificates as are necessary to show that the wood is legally obtained, shall be maintained and made available at the time of inspection by any Forest Officer not below the rank of a Ranger, or Police Officer not below the rank of a Sub-Inspector, having jurisdiction over the area. It shall be presumed that the stock of wood which is not accounted for satisfactorily has been obtained unlawfully, and shall be liable to confiscation in addition to other punishments to which the offender may be liable under this Act.

40 E-VIII. Action by Central Government for control of inter-state smuggling of valuable forest produce like sandal wood or red sanders

With a view to putting down effectively illegal inter-state smuggling of any specified valuable forest produce like sandalwood or red sanders wood wherein quick action is called for to be able to apprehend an offender, the Central Government may empower any category of designated officers of specified border areas of a state where such offences frequently occur or are likely to occur, to pursue such offenders in that other state and to detect and deal with such offenders and make search and seizure in the same manner as he would have done if the offender was found in the place of original occurrence of the offence within the area of jurisdiction of the designated officer or officers in the state where he or they are employed, provided that such empowering will be done only after full consideration of the request in writing received from the government of the state where the offence is believed to have been committed first in point of time as well as the opinion of the neighbouring state or states in which such empowerment is proposed to be made. Such empowering shall be for a specified period of time in the first instance, but renewable for further periods thereafter according to need. The code of conduct of the officers of the various states concerned shall be in conformity with the provisions contained in sections 79.A and 79.B of this Act.

(2) The Central Government may, by notification in the official gazette, declare that the provisions contained in section 40.E to 40.E-VIII (both inclusive) shall apply to any other tree species as specified in such notification from the date specified therein, and all the provisions of this Act which are otherwise applicable to sandalwood and red sanders shall accordingly apply to such species.

40 F. Prohibition of electric connection etc. in unlicensed unit:

Notwithstanding anything contained in any enactment relating to electricity for the time being in force, no electric energy shall be consumed and no electric connection shall be installed for the purposed of any manufacturing or sawing process to which provisions of sections 40.B, \$0D or 40E-II apply, unless the same is duly licensed or deemed to be licensed in accordance with the respective sections and the rules made thereunder (refer M.P. Saw Milling Act; section 10).

# 40. Consequences for violation of provisions contain in section 40.B, 40.D, 40.E-II

If the person authorsied to issue licence under the respective section of sections 40.B, 40.D or 40.E-II or the rule made thereunder, is satisfied that the licensee has;

- (a) parted, in whole or in part with his control over the manufacturing unit or the saw mill or the saw pit, as the case may be or has otherwise ceased to operate or own the same; or
- (b) without reasonable cause, failed to comply with any of the conditions of the licence or any direction lawfully given by the licensing officer, or has contravened any of the previsions of this Act or the rules made thereunder; or
- (c) has in the premises of the processing unit, saw mill or saw pit, as the case may be, forest produce, which he is not able to account for satisfactorily;

then without prejudice to any other penalty to which the licensee may be liable under this chapter and the forfeiture of any security deposit, the person authorised to issue a license or permit, after giving the licensee or permit holder, as the case may be, an opportunity of being heard, revoke or suspend the licence or permit for reasons to be recorded in writing (refer M.P. Saw Mill Act).

# 40 H. Powers of entry and inspection

For the purpose of ascertaining the position or examining the working of any manufacturing unit or saw mill or saw pit or with a view to secure compliance of the provisions of this chapter and the rules made thereunder, the person authorised to issue the licence or any other person authorised by him in this behalf, may-

- (i) enter and inspect any manufacturing unit, saw mill or saw pit;
- (ii) examine and for this purpose order the production of any documents, book, registers or records in the possession or power of any person having the control of, or employed in connection with any manufacturing unit, saw mill or saw pit;
- (iii) search any person or search any premises, vehicle, plant, machine, tools and equipment used or intended to be used in contravention of the provision of this chapter and rules made thereunder, and may stop any vehicle or persons for the purpose;
- (iv) seize any forest produce, plant and machinery, equipment, tool vehicle and any other article which he suspects is already involved or used, or is about to be involved or used in contravening the provisions of this chapter and rules made thereunder.
- (b) The provisions of section 100 of the Code of Criminal Procedure, 1973 (No.2 of 1974) relating to search and seizure shall, so far as may apply to search and seizure under this sub-section (Refer M.P. Saw Milling Act).

# 40 I. Confiscation of saw mill, plant machinery etc.

Where, in contravention of any of the provisions contained in section 40.B, 40.D or 40.F-II as may be applicable in this regard or the rules made thereunder-

- (i) a saw mill or saw pit is established in an area declared to be prohibited or closed under subsections (2) or (3) of section 40.D; or
- (ii) a manufacturing unit, saw mill or saw pit is established or operated without a valid licence; or
- (iii) a manufacturing unit, saw mill or pit is operated after suspension, revocation or expiry of a licence; or
- (iv) a manufacturing unit, saw mill or saw pit is operated with the aid of electrical energy or electrical installation in contravention of section 40.F;or
- (v) unaccounted forest produce is found or stored in the premises of the manufacturing unit, saw mill or saw pit;

shall be liable to confiscation in the manner prescribed in Chapter XI.

# 40 J. Penalties

- (1) If any person contravenes or attempts to contravene of any the provisions of sections 40.B. 40.E-II or 40.F or rules made thereunder, he shall be liable to punishment prescribed in section 78.
- (2) if any person-
- (i) when required by provisions of this chapter, or by any rule or order made under this chapter, to make any statement or furnish any information, and makes such statement or furnishes such information which is false in any material particular and which he knows or has reason to believe to be false or does not believe to be true; or
- (ii) makes any statement as aforesaid in any book, account, record, declaration, return or other document which he is required to maintain or furnish under this chapter;

he shall be liable to punishment prescribed in section 78.

# 41. Power to regulate transit of timber and other forest produce

(1) the control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest produce in transit by land, water or air is vested in the State Government and it may, subject to the provisions contained in section 38.A, make rules to regulate the possession and transit of all time and other forest produce.

# 41 A. Powers to Central Government as to movement of timber and other forest produce

Notwithstanding anything contained in section 41, the Central Government may;

- (i) prescribe the route by which alone timber and other forest produce could be imported, exported or moved into or from the territories to which this Act extends, across any customs frontier as defined by the Central Government;
- (ii) prohibit or regulate the movement of timber and other forest produce, as may be specified by a notification in the official gazette, from one state to another, or prescribe the routes by which alone such timber and other forest produce may be moved between states.

# 41 B. Restrictions on transporters

Subject to the provisions contained in section 38A, no transporter shall accept from any person timber or any forest produce for transport by land, water or air, in contravention of the provisions of this Act (Refer section 48 of l&K Wild Life Act).

42. Whoever contavenes any of the provisions contained in sections 40 A, 40 C, 40 F, 40 F-L 40 E-III 40 F-VII 41 A or 41 B or

any rule made thereunder shall be liable to punishment prescribed under section 78.

#### 43. Government and Forest Officers Not Liable etc etc.

The Government shall not be responsible for any loss or damage which may occur in an timber or officers not liable for damage to fcrest produce at depot.

established under provisions of this chapter or the rules made thereunder, or while detained elsewhere for the purposes of this Act, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

# 44. All persons bound to aid in case of accident at depot

- (1) In case of any accident or emergency involving danger to any property at any such depot, station or premises of the manufacturing unit or case of saw mill every person employed at depot, station or premises of the processing unit or saw mill as the case may be, whether by the Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger or securing such property from damage or loss.
- (2) Any person contravening provisions of subsection (1) shall be liable to punishment prescribed in section 78.

# CHAPTER VIII

# THE COLLECTION OF DRIFT AND STRANDED TIMBER

- 45. Certain kinds of timber to be deemed property of of State Government until title thereto proved, and may be collected accordingly.
- (1) All timber found adrift, beached, stranded or sunk;

all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the State Government directs all unmarked wood and timber;

shall be deemed to be the property of the State Government, unless and until any person establishes his right and title thereto, as provided in this chapter.

- (2) Such timber may be collected by any Forest Officer or other person entitled to collect the same by virtue of any rule made under clause (1) of sub-section (2) of section 76.A, and may be brought to any depot which the Forest Officer may notify as a depot for the reception of the drift timber.
- (3) The State Government may, by notification in the official gazette, exempt any class of timber from the provision of this sanction.

#### 46. Notice to claimants of drift timber

Public notice shall from time to time be given by the Forest Officer of timber collected under section 45; such notice shall require any person claiming the same to present to such officer, within a period not less than sixty days from the date of such notice, a written statement of such claims.

### 47. Procedure on claim preferred to such timber

- (1) When any such statement is presented as aforesaid, the Forest Officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.
- (2) If such timber is claimed by more than one person, the Forest Officer may either deliver the same to any of such persons who he deems is entitled thereto, or may refer the claimants to the civil Court and retain the timber, pending the receipt of an order from any such Court for its deposal.
- (3) Any person whose claim has been rejected under this section may, within ninety days from the possession of the timber claimed by him but no person shall recover nay compensation or costs against the Government, or against any Forest Officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section
- (4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in his section.
- (5) Where the matter is pending before a Court under this section, the Divisional Forest Officer may, with the permission of the Court, instead of retaining the timber under sub-section (2) sell the timber in public auction and remit the proceeds in the nearest

Government Treasury. The Court may deal with the proceeds of the sale of any such timber as if it had not been sold. (Refer Andhra Act)

### 48. Disposal of unclaimed timber.

If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or hen such timber has been delivered to another person under section 47, in such other person free from all encumbrances.

#### 49. Government and its officers not liable to such timber.

The Government shall not be responsible for any loss or damage which collected under section 45, and is Forest Officer shall be responsible for any such loss or damage, unless he causes such loss damage negligently, maliciously and fraudulently.

# 50. Payments to be made by claimant before timber is delivered to him.

No person shall be entitled to record possession of any timber collected or delivered aforesaid until he has paid to the Forest Officer or other person entitled to receive it such sum account thereof as may be due under any rule under clause (1) of sub-section (2) of sec 76.A.

#### 51. Penalties.

The contravention of the rules made carrying the provisions this Chapter shall liable to punishment prescribed in section 78.

### CHAPTER IX

# **PROCEDURES**

# 52. Seizure of property liable to confiscation

- (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, ropes, chains, boats, vehicles, cattle, plant, machinery, equipment, weapon and any other article used in committing such offence, may be seized by any Forest Officer, Police Officer or Revenue Officer.
- (2) Every office seizing any property under this section shall place on such property, or the receptacle, if any, in which it is contained, a mark indicating that the size has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity or bull or other genuine difficulty, not practicable to produce property seized before the authorised officer make a report about the seizure to the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made,

provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of the Government, and the offender is unknown, it shall be sufficient if

the officer makes, as soon as may be, a report of the circumstances to his official superior (ref: M.P. Amendment).

Provided further that when a criminal proceeding is launched by any Police or Revenue Officer under this Act or any other Act and the property seized involves forest produce, he shall make a report of such seizure to the authorised officer, who may initiate proceedings for confiscation of the seized property in the manner prescribed in section 52.A.

- (3) Any Forest Officer, Police Officer or Revenue Officer may, if he has reason to believe that a boat or vehicle or cattle has been or is being used for the transport of any forest produce in respect of which a forest offence has been committed, require the driver or other person in charge of such boat, vehicle or cattle to stop the same and the said boat, vehicle or cattle may be detained for such reasonable time as is essential to examine the contents and records and to ascertain the claims of the driver or other person in charge of the boat, vehicle or settle regarding the ownership and legal origin of the forest produce in question (Also refer West Bengal Proposed Amendment).
- (4) The property seized under his section may be kept in the custody of a responsible person until a decision is obtained regarding the disposal, under a proper receipt and on an undertaking to produce the same when required.
- (5) When cattle are involved in the commission of a forest offence, the same after seizure by any Forest, Police or Revenue Officer, as the case may be, may be released to the owner or his representative or entrusted to any responsible person under a proper receipt on an undertaking to produce the same when required in case there is no cattle Pound within a radius of five kilometers from the place of such offence.

Provided that, notwithstanding anything contained in section 57, in case of unclaimed cattle a Forest Officer not below the rank of a Gazetted Officer, after giving sufficient publicity in the vicinity of the place of offence for the owner to come forward to claim the cattle within seven days from the date when such publicity was given, may dispose them of by public auction. The provisions of the Cattle Trespass Act 1871, shall apply in respect of the charge to be levied for the upkeep and feed of the cattle.

# 52.A Procedure to be adopted by the authorised officer

Upon production before him of the property seized or upon receipt of report about seizure under sub-section (2) of section 52, subject to sub-section (3) where the authorised officer is satisfied that a forest offence has been committed in respect thereof, (refer W.B. proposed amendment) by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, chains, ropes, boats, vehicles, cattle, plant, machinery equipment, weapons or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the Conservator of Forest of the Circle in which the forest produce has been seized. (refer M.P. Act)

- (2) No order confiscating any property shall be made under sub-section (1) unless the authorised officer-
- (a) sends an intimation, in the form prescribed about intimation of proceeding for confiscation of property, to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues a notice, in writing, to the person from writing, to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property;

- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice, against the proposed confiscation; and
- (d) gives to the officer effecting the seizure and the person or persons to whom notice had been issued under clause (b) a hearing on a date to be fixed for such purpose (refer M.P. amendment).

Provided that the authorised officer may himself sell or direct sale of any property, seized and referred to him under subsection (2) of section 52, which is subject to speedy decay and may deal with the proceeds as he would have dealt with such property if it had not been sold.

(3) No order of confiscation under sub-section (1) of any tools, ropes, vehicles, cattle, plant, machinery, equipment, weapon or any other article, as the case may be, (other than forest produce seized) shall be made if any person referred to in clause (b) of sub-section (2) proves to the satisfaction of the authorised officer that any such tools, chain, ropes, boats, vehicle, cattle, plant, machinery, equipment weapons or other article, were used without his knowledge or connivance or without the knowledge or connivance of his servant or agent, as the case may be, and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for the commission of the forest offence (refer M.P. Amendment).

#### 52.B Revision

Any Forest Officer not below the rank of a Conservator of Forests empowered by the State Government in this behalf by notification in the official gazette may, before the expiry of thirty days from the date of order of the authorised officer, suo motu call for and examine the records of that order and make such enquiry or cause such enquiry to be made and may pass such orders as he

deems fit confirming, modifying and setting aside the order (refe Karnataka Act)

He may also pass such orders of consequential nature, as may deem necessary. Copies of order passed in revision or order of consequential nature shall be sent to the authorised office for compliance or passing any other appropriate order in conformit with such orders (refer M.P. Amendment).

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.(refer Karnataka Act)

### 52.C Appeal

(1) Any person aggrieved by any order or by order or consequential nature passed under section 52A or section 52B may within thirty days from the day of communication to him of succorder, appeal to the Court of Sessions having jurisdiction over the area in which the property to which the order relates to has been seized (refer Karnataka Act section 71.D).

The Court of Session shall, after giving an opportunity the Appellant and the authorised officer of the official special empowered under section 52B, as the case may be, to be hear pass such order as deemed fit confirming, modifying or annulling the order or order of consequential nature appealed against for (refer Karnataka Act section 71.D).

- (3) Copies of the order passed on appeal shall be sent to the specially empowered officer under section 52B and to authorised officer, for compliance or for passing such further order or for taking such further action as may be directed by such Cou (refer M.P. amendment).
- (2) Notwithstanding anything to the contrary contained in t Code of Criminal Procedure 1973, (2 of 1974), the order of t

Court of Sessions passed under this section shall be final and shall not be called in question before any Court (refer M.P. Amendment; section 52.B).

# 52D. Award of confiscation not to interfere with other punishments.

The award of any confiscation under section 51A or 52B or 51.C shall not prevent the infliction of any punishment to which the person attested thereby is liable under this Act (refer Karnataka Act section 71.E).

# 52E. Jurisdiction of Court etc. under certain circumstances.

(1) On receipt of intimation under subjurisdiction section (2) of section 52A about proceedings for confiscation of property by the authorised officer, the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is the subject matter of confiscation has been made, no Court, Tribunal or Authority (other than the authorised officer, under sub-section (2) of section 52; empowered officer under section 52B and Court of Sessions referred to under section 52C), shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under section 52.A,

notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force (refer M.P. Amendment).

Explanation: Where under any law for the time being in force two or more Courts have jurisdiction to try forest offence, then on receipt of intimation under sub-section (2) of section 52A given by one of the Courts the bar to exercise jurisdiction shall operate or all such Courts.

(2) Nothing in sub-section (1) shall effect the pour incomment section 52.C)

53.Power to release property seized under section 52 in certain cases

Any Forest Officer of a rank not below that of a Ranger of a Deputy Ranger in charge of a Range who, or whose subordinate has seized any tool, rope, chain, boat, vehicle, cattle, plant machinery, equipment, weapon or any other article under section 52, may release the same if-

- (i) subject to the provisions contained in section 58, the offender requests in writing to forthwith get the offence compounded;
- (ii) the offender is not believed to have violated any of the provisions contained in sections 40.A, 40.B, 40.C, 40.D, 40.E, 40.F and
- (iii) the value of the forest produce in respect of which the offence has been committed, if believed to be the property of the government, does not exceed a specified limit as notified y the State Government from time to time, but which shall always be less than five thousand rupees;

on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the authorised officer and the Magistrate having jurisdiction to try the offence in the event of criminal proceedings being launched against the offender (refer W.B. proposed amendment).

### 54. Procedures when criminal proceedings launched

Upon production before the receipt of any report under subsection (2) of section 52, the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and the disposal of the property according to law provided the before passing any order for disposal of property, the Magistrate shall satisfy himself that no intimation under sub-section (2) of the property according to the property according

section 52.A has been received by this Court or by any other Court having jurisdiction to try the offence on account of which the seizure of the property has been made (Refer M.P. Amendment) (CBF draft: section 54).

# 55. Forest produce, tools etc. liable to confiscation

- (1) All timber or other forest produce which in either case is not the property of the government and in respect of which a forest offence has been committed, and all tools, ropes, chains, boats, vehicles, cattle, machinery, plant, equipment, weapon or any other article, in each case used in committing any forest offence, shall, subject to the provisions of sections 52, 52.A, 52.B, 52. C, be liable to confiscation upon conviction of the offender for such forest offence (refer M.P. amendment).
- (2) Such confiscation may be in addition to any other punishment prescribed for such offence.

# 56. Disposal on conclusion of trial for forest offence, in respect of which it was committed

When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed, if it is the property of the Government or has been confiscated, be taken charge of by a Forest Officer, and in any other case may, subject to section 52.E be disposed of in such manner as the Court may direct. (Maharashtra Amendment).

# 57. Procedure when offender not known or cannot be found

When the offender is not known or cannot be found, the Magistrate may, subject to section 52,E, if he finds that an offence has been committed, order the property including tools, ropes, chains, boats, vehicles, cattle, plant, machinery, equipment, weapon and any other article, alongwith the forest produce in respect of which the offence has been committed, to be confiscated

and taken charge of by the Forest Officer or to be made over to the person whom the Magistrate deems to be entitled to the same; (refer Maharashtra Amendment)

Provided that no such order shall be made except in the case of cattle for which directions to proceed according to sub-section (5) of section 52 may be given, until the expiration of thirty days from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

# 58. Procedures to perishable property under section 52

(a) the Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized and referred under section 52 to him and subject to speedy and natural decay:

provided that when, in the opinion of the officer seizing such property, it is not possible to obtain the orders of the Magistrate in time, such officer may sell the property himself, remit the sale proceeds to the nearest Government Treasury and make a report of such seizure, sale and remittance to the Magistrate and thereupon the Magistrate shall take such measures as may be necessary for the trial of the accused.

- (b) the Magistrate may deal with the proceeds of the sale of any property held under clause (a) in the same manner as he might have dealt with the property if it had not been sold (refer A.P. Act section 48).
- 59. Appeal from orders under section 55, section,56, or section 57.

The officer who made the seizure under section 52 and launched the prosecution thereunder or any of his official superiors or any person affected/aggrieved by the order of the

Magistrate may, within thirty days from the date of such order, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

# 60. Property when to vest with Government

- (1) When an order for confiscation of any property has been passed under section 52 A or section 52B or section 52C and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, or if it had been sold under sub-section (5) of section 52 or sub-section (2) of section 52A, the sale proceeds thereof, as the case may be, shall vest in the State Government, free from all encumbrances (Refer Karnataka Act. section 71.F).
- When an order for the confiscation of any property has been passed under section 55 or section 57 and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when on such an appeal being preferred the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof or if it had been sold under sub-section (5) of section 52 or section 53, the proceeds thereof, as the case may be, shall vest in the Government free from all encumbrances (refer CBF draft section 60).

# 60.A Penalty for forcibly opposing seizure

Whoever forcibly opposes the seizure of forest produce, tools, ropes, chains, boats, any other article under this Act, and whoever rescue the same after seizure from the custody of the Forest Officer, Police Officer, Revenue Officer or any person authorised for its safe custody shall be liable to punishment prescribed in section 78

# 61. Saving of power to release property seized

Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52 which is not the property of the government.

provided that where a report is made to the Magistrate of the property seized under section 52 the officer so empowered, shall not release the property without the consent in writing of such Magistrate (ref; section 51, A.P. Act).

- 62. (1) Punishment for wrongful seizure or arrest Any person exercising powers under this Act who vexatiously and unnecessarily seizes the property on pretence of seizing property liable to confiscation under this Act, or who vexatiously and unnecessarily arrests any person, shall be liable to punishment prescribed in section 78.
- (2) Any fine so imposed, or any portion thereof, shall, if the convicting court so directs, be given as compensation to the person aggrieved by such seizure (refer Karnataka Act).

# 63. Penalty for counter feiting or defacing mark on trees and altering boundary mark

Whoever, with intent to cause damage or injury to the public, or to any person, or to cause wrongful gain as defined in the Indian Penal Code-

(a) Knowingly counterfeits upon any timber, standing tree, or any other forest produce or a recepticle containing such produce, a mark used by Forest Officers to indicate that the same is the property of the government or some person, or that it may lawfully be cut, removed or utilized by some person; or

- (b) unlawfully affixes to any timber, standing tree, or any other forest produce or a recepticle containing such produce, a mark used by any Forest Officer; or (refer A.P. Act)
- (c) alters, defaces or obliterates any such mark placed on a tree, on timber or any other forest produce or a recepticle containing such produce by or under the authority of a Forest Officer; or
- (d) alters, moves, destroys, or defaces any boundary mark of any forest on any land to which the provision of thus Act apply: shall be liable to punishment prescribed in section 78.

#### 64. Power to arrest without warrant

- (1) All offences under this Act shall be congnizable and any Forest Officer, Police Officer or Revenue Officer may, without orders from a Magistrate and without a warrant, arrest and detain in custody;
- (1) any person if the officer knows or has reason to believe that such person is committing or has committed any forest offence or if a reasonable suspicion exists against such person of his having been concerned in any forest offence (refer A.P. Act, Gujarat Amendment);
- (ii) any person who obstructs such officer in the execution of his duty under this Act or who has escaped or attempts to escape from custody in which he has been or is lawfully detained under this Act (refer section 14, Bombay Opium Smoking Act);
- (iii) any person who has committed or has been accused of committing an offence under this Act, refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond (refer section 17 of Bombay Opium smoking Act and section 68 of Orissa Forest Act: section 7- of Sikkim Forest Act).

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

# 65. Power to release on bond a person arrested

Any Forest Officer of rank not below that of a Ranger or a Police Officer of rank not below that of Sub-Inspector or a Revenue Officer not below the rank of a Tehsilder, who, or whose subordinate has arrested any person under the provision of section 64 may, subject to and without prejudice to the provisions of section 65A, release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case or before the officer in charge of the nearest Police Station or any authorised officer under section 52 (refer Maharashtra amendment).

### 65A. Certain offences to be nonbailable

Notwithstanding anything contained in this Act or in the code of Criminal Procedure. 1973 (II of 1974)-

- (a) the officers under the sections or clauses mentioned below shall, be non-bailable. namely
- all offences for which a minimum imprisonment is prescribed under section 78; sections 40.B, 40.D, 40.E-II, 40.F, 60.A, and 63.
- (b) no person accused of any offence referred to in clause (a) shall, if in custody, be released on bail or his bond unless-
- (i) the prosecution has been given an opportunity to oppose the application of such release, and
- (ii) where the prosecution opposes the application, the Court is satisfied that there are reasonable grounds for believing that he

is not guilty of such offence (refer Maharashtra Amendment; karnataka Act);

# 66. Power to prevent commission of offence

Every Forest Officer, Police Officer and Revenue Officer shall prevent and may interfere for the purpose of preventing the commission of any forest offence (refer Gujarat Amendment).

### 66.A Power of entry and search

Any Forest Officer not below the rank of an Assistant Conservator of Forests, when he has reason to believe that an offence under this Act has been committed in any place, he or an officer duly empowered by him, may-

- (a) enter such place at any time by day or by night with any person whose assistance he may consider necessary;
- (b) in case of resistance, break open any lock of any door and remove any obstacle to his entry into such place;
- (c) search any such place in which he has reason to believe that any forest produce or tool, plant, equipment, rope, chain, machinery, weapon or any other article involved or likely to be involved in commission of forest offence is concealed;
- (d) seize any document or other article which, he has reason to believe, may furnish evidence of the commission of an offence under this Act (refer section 13, Bombay Smoking Act).

# 67. Power to try offences summarily

(1) Any Magistrate of the first class, specially empowered in this behalf by the State Government in consultation with the High Court, may try summarily, under the Code of Criminal Procedure, 1973 (II of 1974), any forest, offence punishable with imprisonment for a term not exceeding three years or fine not exceeding ten thousand rupees, or both, and the provisions of sections 262 to 265

(both inclusive) of the said Code shall, as far as may be, apply to such trial but, notwithstanding anything contained in the said Code, in the case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass sentence of imprisonment for the Magistrate to pass sentence of imprisonment for any term for which such offence is punishable under this Act (refer Maharashtra amendment).

# 67.A Appointment of special court

Notwithstanding anything to the contrary contained either in the Criminal Procedure Code 1973 or any other law for the time being in force, the State Government may by notification in the official gazette, constitute a Special Court with powers of a First Class Magistrate for the trial of all forest offences punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both, in accordance with the procedure prescribed for summary trials under Chapter XXI of the Criminal Procedure Code 1972 (Refer Bihar Amendment Bill of 1989).

# 68. Power to fine offenders

- (1) Subject to the provisions of sub-section (3), the State Government may, by notification in the official gazette, empower a Forest Officer-
- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 60A section 62 or section 63 or section 75 or for which a minimum period of imprisonment is prescribed, payment of a sum of money or, at his discretion, an undertaking in writing to pay a sum of money, by way of compensation for the offence which such person is suspected to have committed, provided that the sum of money accepted by way of compensation shall in no case be less than the amount involved

in the loss caused by such offence; and (refer J&K Act and WL (P) Act. 1972).

- (b) when any property other than government property has been seized as liable to confiscation, subject to section 52B to release the same on payment of, or at his discretion, on acceptance of an undertaking in writing to pay the value thereof as estimated by such officer (refer Maharashtra Amendment, Gujarat Amendment).
- (2) On the payment of , or on acceptance of an undertaking in writing to pay such sum of money or such estimated value or both, as the case may be, to such an officer, the suspected person, if in custody, shall be discharged, the property seized, if any shall be released, and no further proceedings, other than those under section 82, where necessary, shall be taken against such person or property.
- (3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger, provided that if the amount involved in the loss caused by the forest offence exceeds five thousand rupees he shall not be a Forest Officer of a rank inferior to that of an Assistant Conservator of Forests.

# 69. Forest produce presumed to be government property

When any proceedings taken under the provisions of this Act or in consequence of anything done under this Act or under any other law for the time being in force, a question arises as to whether any forest produce is the property of the government, such produce shall be presumed to be the property of the government until the contrary is proved and in case of any prosecution the burden of proving the contrary shall lie on the accused (Refer section 75 of Sikkim Forest etc. Act).

69A. Punishment for knowingly receiving any forest produce illegally removed

Any person who knowingly receives or knowingly keeps in his possession without sufficient care to ascertain its legal origin, any forest produce illegally removed from any forest, shall be liable to punishment prescribed in section 78.

# CHAPTER X

# CATTLE TRESPASS

# 70. Cattle Trespass Act, 1871 to apply

Cattle trespassing in a reserved forest or in any portion of a protected forest or village forest or other class of land to which the provision of this Act apply and which are lawfully closed to grazing, shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle Trespass Act 1871, and may be seized and impounded as such by any Forest Officer or Police Officer or Revenue Officer.

70A. Where a cattle pond does not exist within a range of ten kilometers from any reserved, protected or village forest, the State Government may empower the Divisional Forest Officer, in any such reserved, protected or village forest or any other land that may be available for this purpose. The Divisional Forest Officer may designate any Forest Officer to be in charge of the said cattle pond and the provisions of the Cattle Trespass Act 1871, shall apply to the same.

### 71. Power to alter fines fixed under that Act

The State Government may, by notification in the official gazette, direct that, in lieu of the fines fixed under section 12 of the Cattle Trespass Act 1871, there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it deems fit and notifies in the official gazette.

# CHAPTER XI

# POWERS OF FOREST OFFICERS

# 72. State Govt. may invest Forest Officers with certain powers

- (1) The State Government may invest any Forest Officer with all or any of the following powers, that is to say-
- (a) power to enter upon any land and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects
- (c) power to issue a search warrant under the Code of Civiprocedure, 1973;
- (d) power to hold an inquiry, into forest offences, and in th course of such inquiry, to receive and record evidences.
- (2) Any evidence recorded under clause (d) of sub-section (1 shall be admissible in any subsequent trial before a Magistrate of proceedings by an authorised officer under sub-section (2) of section 52, provided that it had been taken in the presence of the accused person.

# 72A. Power of entry, inspection, investigation and prosecution

at any time enter and inspect any land within his area of jurisdiction to which provision of Chapter IV or Chapter V of the Act apply, for the purpose of ascertaining whether there has been contravention of any of the provisions of this Act and the rule

- any such provision.
- (2) It shall be lawful for such Forest Officer to lay any information before a Magistrate of a Forest Officer empowered under clause (c) of sub-section (1) of section 72, and to apply for summons, warrant, search warrant, or such other legal process as may by law issue against any person committing an offence and to conduct prosecution upto the final judgement.

# 72B. Powers to reward in certain cases

(1) The Divisional Forest Officer may reward any person including a Forest Officer of the rank or lower than that of a Ranger, who has help in the detection of a forest offence, the seizure of any vehicle or other property, or in the apprehension of any offender under the provisions of this Act, with an amount not exceeding ten thousand rupees in each case, which may extend upto twentyfive percent of the value of the forest produce conflicated or the amount recoverable as compounding fee or compensation, under section 68;

provided that where no such confiscation has been made or no amount received as compensation, the maximum reward that may be paid shall not exceed two thousand rupees.

- (2) The Divisional Forest Officer may reward any person including a Forest Officer of the rank of or lower than that of a Ranger, upto an amount not exceeding two thousand rupees, for having rendered meritorious service and assistance in the prevention or putting out of any fire.
- Officer of the rank of or above that of an Assistant Conservator of Forests with an amount not exceeding ten thousand rupees, for rendering any exceptional service in the protection of forest, or the prosecution and apprehension of an offender under this Act.

# 73. Officers deemed public servants

All Forest Officers and all other officers exercising any of the powers conferred by this Act shall be deemed to be:

- (a) public servants within the meaning of Indian Penal Coc 1860 (45 OF 1869).
- (b) Police Officers for execution of search warrants issued exercise of powers conferred under clause (c) of sub-section (1) section 72 (refer section 59 of WL (P) Act and Orissa Forest Act

# 74. Indemnity to acts done in good faith

- against the Central Government or State Government or an officer of the Central or State Government or any other personal exercising any power or discharging any functions or performing any power or discharging any functions or performing any dution under this Act, for anything any duties under this Act, for anything in good faith done or intended to be done under this Act, for any rule or order made thereunder (Refer: section 69 Narcotics and Psycho-substances Act).
- (2) No police Officer shall arrest nor shall any Court ta cognizance of (nor shall issue remand for judicial custody for ) a offence alleged to have been committed or purported to have be committed by a Forest Officer in discharge of his official duties, any offence alleged to have been committed under this Act, exce with the prior approval of the authority competent to remove h from service (New: refer Gujarat (proposed) amendment).

# 75. Forest Officers not to trade in forest produce etc.

(1) (a) Except with the permission in writing from the Sta Government or an officer authorised in this behalf, no For Officer shall as principal or agent, trade in timber or other for produce, or become interested in any lease of any forest produ or in any contract for working any forest whether in or outside the territories to which this Act extends.

(c) Any Forest Officer, who contravenes the provisions contained in clause (a) or clause (b) of this sub-section shall be liable to punishment prescribed in section 78.

Explanation: For the purposes of this section, "trading in ferest produce" means the sale or purchase of any forest produce in any manner, share or form, whatsoever as principal or agent or by himself in any manner whatsoever or carrying in business in it with a view to make profit (Refer Gujarat amendment proposed).

- (2) (a) whoever, being a Forest Officer or any other Officer empowered under this Act, intentionally or knowingly permits, connives or abets any forest offence under this Act or the rules made thereunder;
- (b) whoever, being a Forest Officer manipulates issue of fictitious transit passes with a view to giving benefit to any person or for causing wrongful loss to the Government;
- (c) any Forest Officer or any other Officer empowered under this Act, who is in possession of timber or any other forest produce, other than that for his bonafide domestic use, which he cannot satisfactorily account for;
- (d) whoever, being an Officer responsible for giving demarcation of boundaries of private and Government forests for the purposes of felling of trees in private forests or any other purpose under the provisions of this Act, intentional or knowingly gives wrong demarcation so as to cause loss to the Government or gain to any person;
- (c) whoever, being an officer whose duty it is to preserve and protect wildlife-
- (i) commits, permits, connives or abets illegal hunting of wild animals; or

- (ii) gives shelter to the poachers; or
- (iii) helps in arranging drives of animals or putting fire to will animal habitats with a view to herding for easy hunting; or
- (iv) conceals information of illegal hunting of wild animals of illegal possession of animal articles or trophies of wild animal mentioned in Schedule I of the Wildlife (Protection) Act, 1972; shall be liable to punishment prescribed in section 78.
- (3) The sanction for prosecution of a Forest Officer or ar other Officer for an offence under this chapter, issued und section 197 of the Code of Criminal Procedure, 1973, ar purporting to be duly authenticated and sealed, shall ladmissible in evidence without formal proof.
- (4) Any technical defect in the course of sanction grants under section 197 of the Code of Criminal Procedure, 1973 for the prosecution of a person employed in connection with the affair of the state shall not vitiate the trial unless it is proved that caused substantial prejudice to the accused.
- (5) A No court shall take cognizance of an offence under the section against any officer unless a report in writing is made to an officer or authority competent to remove him from the service
- (6) The provisions of this section shall be in addition to, and not in derogation of, the provisions of the prevention Corruption Act, 1947, the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 (Refer H.P. Prevention of specific Corrupt practices Act and Gujarat Government's propose amendment);

# CHAPTER XII

# POWER TO MAKE RULES

# 76. Power of Central Government to make rules

- (1) The Central Government may, by notification in the official gazette, make rules to carry out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the above powers, such rules may provide for all or any of the following:
- (a) regulating the practice of shifting cultivation in forests and other natural ecosystems;
- (b) rationalising rights, privileges and concessions in respect of forest produce from reserved and protected forests;
- (c) the terms, conditions and the manner in which duty on timber and other forest produce may be levied under section 39 (1);
- (d) the manner in which trade and possession of forest produce under section 40A shall be regulated;
- the manner and the conditions under which licences shall be granted to the industries obtaining forest produce for purposes of manufacture, in accordance with provisions contained in section 40A i and the matters ancillary to the previsions contained in section 40A II;
- the matters to be prescribed under section 40B and section 41A;

- (h) the manner in which regulatory provisions specified in Chapter XIV shall be enforced;
- (i) the manner in which the officers of the Centra Government shall be enabled to carry out the provisions of the Act.
- (2) Every rule made by the Central Government under the section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session of the successive session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or to of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### 76. Power to make rule by the State Government

- (1) Subject to the provisions contained in sub-section (3) this section, the State Government may make rules to carry of the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the above powers, such rules may provide for all or any of the followings;
- (a) the matters specified under section 5 and 15; precaution to be taken while handling fire in the vicinity of a reserved forest and prohibition on fishing in or poisoning of water in a reserve forest;
- (b) commutation of rights under section 16;

- (c) protection. management and regulation of access to a protected forest which, inter alia, may-
- (i) subject to the provisions contained in clause of section 30, regulate or prohibit alienation, occupation, clearing, ploughing or breaking up of land for cultivation or other purposes, quarrying of any major or minor mineral, the burning of lime or charcoal, subjecting any major or minor mineral or any other forest produce to a purifying or manufacturing process;
- (ii) regulate, phase out or extinguish the practice of shifting cultivation in the manner deemed fit;
- (iii) regulate or prohibit the kindling of fire and provide for the precautions to be taken to prevent the spreading of fire;
- (iv) regulate or prohibit the marking, girdling, lopping tapping, felling cutting, sawing conversion and removal of trees and timber and the collection and removal of any other forest produce;
- (v) regulate or prohibit the cutting of grass or pasturing of cattle and prescribe the payments, if any, to be made for the same;
- (vi) regulate the granting of licence to inhabitants of towns and villages in the vicinity of protected forests to take forest produce for their bonafide domestic use and the production and return of such licences by such persons; and prescribe the fees, royalties or other payments therefore; (A.P. Act)
- (vii) prescribe the exercise of rights referred to in section 29;
- (viii) prohibit fishing in or poisoning of water;
- (ix) provide for the examination of forest produce passing out of protected forests;
- (d) the matters specified in clause (c) of sub-section (1) of section 34.AA;

(e) protection, development, management and regulation of access of individuals or village communities to a village forest and distribution of usufructs and fuelwood from such forests which, inter alia, may prescribe the manner in which the management plans for such forest shall be prepared and executed; and how the village forest development fund referred to in sub-section (3) of section 34.AA shall be utilized, the loans to be advanced by the government under clause (c) of sub-section (3) of section 34,AA, shall be recovered and how duties and responsibilities of individuals or the body, shall be discharged; the manner in which land shall be assigned to individuals for afforestation in accordance with the provisions contained in clause (b) of sub-section (2) of section 34.AA,

Provided that when any village forest, or part thereof, has been notified from a protected forest the rules made under clause (c) shall take precedence.

- (f) carrying out the provisions contained in Chapter V, in particular-
- (i) provide for enforcement of regulations and prohibitions contained in sub-section (1) of section 35;
- (ii) prescribe the manner in which the objections of owners or the claimants shall be heard and decided for the purpose of carrying out provisions of clause (b) of sub-section (2) of section 36;
- (iii) prescribe the manner in which management or development of forest taken over under Chapter V shall be carried out and how the payments due to the owner or the claimant shall be decided;
- (iv) prescribe the manner and the conditions under which land may be assigned to individuals for plantation under section 38E
- (v) prescribe the kinds of trees and the minimum girth of such trees and the type of other forest produce that may be permitted

for removal from the areas to which produce that may be permitted for removal from the areas to which provisions of Chapter V are applicable and the procedures, terms and conditions for granting such permissions; (U.P. amendment and A.P. Act)

- (g) (i) the mattes specified in sub-section (4) of section 38.F;
- (ii) the matters specified in section 38.G (I to XIII);
- (h) the matters specified in sub-section (5) of section 39;
- (i) carrying out provisions of sections 40.A and 40.AA, and in particular to provide for-
- (i) settlement of claims preferred under section 40.A;
- (ii) felling, extraction, possession, transport, mode of transport and sale of such forest produce as well as its purchase from private growers;
- (iii) opening of depots and fixing of sale price; and
- (iv) any other matter requited to be prescribed or carrying out the provision of sub-section (1) of section 40.A;
- (j) carrying out the provision of sections, 40.B, 40.C, \$0.E, 40.E-II and in particular to provide for-
- (i) the manner and the terms and conditions under which licences or permits shall be granted under the said sections and the matters ancillary thereto;
- (ii) registers to be maintained, returns to be furnished from time to time as may be prescribed for this purpose;
- (iii) registration of sale depots and marks for the purposes of section 40°C and the period for which such, arks shall be valid;
- (iv) the manner in which the premises of saw mills, saw pits, sale depots and manufacturing units shall be maintained:

- (v) the timing of operations of saw mills and manufacturing units;
- (vi) fixing of rates at which sandalwood or its byproducts shall be purchased and the manner in which centres for such purchase shall be established and operated.
- (k) carrying out the provisions of section 41 and in particular to-
- (i) prescribe the period of the day and the routes during and by which alone timber and other forest produce be imported, exported or moved into from or within the states;
- (ii) prohibit, import or export or moving of timber and other forest produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass or a without a transit mark affixed by such an officer;
- (iii) provide for the issue, production and return of such passes and for affixing of transit marks and the payment of fees therefor;
- (iv) provide for the stoppage, reporting, examination and marking of timber and other forest produce in transit, in respect of which there is reason to believe that any money is payable to the government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon or on which it is desirable for the purpose of this Act to affix a mark;
- (v) provide for the establishment and regulation of depots to which timber and other forest produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or forest produce shall be brought to stored at, and removed from such depots:
- (vi) provide for the prevention, or removal of any obstruction of the channel or bank of any such river or canal and for recovering

the cost of such prevention or removal from the person whose acts or negligence necessitated the same (Refer A.P.Act);

- (vii) prohibit absolutely or subject to conditions, cutting, converting, concealing or marking of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;
- (viii) regulate the use of property marks for timber and the registration of such marks; declare the circumstances in which the registration of any property mark may be refused or cancelled; (A.P.Act); prescribe the time for which such registration shall be valid; limit the number of such marks that may be registered by any person and provide for the levy of fees for such registration;
- (ix) the setting up and regulation of checkposts and barriers at such places as the Forest Officer may specify with a view to prevent or check the carrying of smuggled timber and other forest produce (Refer A.P. Act);
- (i) provide for the maintenance of accounts by individuals, agencies or organisations dealing in timber and other forest produce in respect of such timber and other forest produce as the State Government may notify;
- (xi) provide for the management and control of depots, stations, check posts or barriers required to be set up under section 41 and for regulating the appointment and duties of persons employed for this purpose and the matters connected thereto (Refer A.P. Act);
- (1) carrying of provisions contained in Chapter VIII and in particular to regulate the following-
- (i) the salving, collection and disposal of all timber mentioned in section 45;

- (ii) the use and registration of boats and vehicles used in salving and collecting timber;
- (iii) the amount to be paid for salving, moving, storing or disposing of such timber; and
- (iv) the use and registration of hammers and other instruments to be used for marking such timber;
- (m) prescribing the powers and duties of any Forest Officer, Police Officer or Revenue Officer under this Act;
- (n) regulating the rewards to be paid to the officers and informers out of proceeds of fines and of confiscation under this Act or from the Public Treasury (Refer Karnataka Act, A. P. Rules);
- (o) the preservation, reproduction and disposal of trees and timber or forest produce belonging to government, but grown on lands belonging to or in the occupation of private persons;(P) regulating payments of incentives to any person or persons who render exceptionally good service in protection of forests (refer A.P. Rules);
- (q) regulating the procedure of working by the Forest Officers under this Act (refer Sikkim Act);
- (r) providing for the protection of rights of Scheduled Tribes in respect of forest produce (refer parallel provision in Kerala Act-section 76, clause (a));
- (s) regulating the procedure to be followed by the Forest Settlement Officer (refer A.P Act section 68, clause (b));
- (t) any other matter which is required to be or may be prescribed (Refer Sikkim Act).
- (3) Where the rules framed by the Central Government and the State Government are in conflict, the former shall prevail.

#### 77. Rules when to have force of law.

(1) All rules made by the Central and State Government under this Act shall be published in the official gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

Provided that prior to the publication of rules made by it, the State Government shall obtain approval of the Central Government of the same.

All rules made under this Act by the State Government shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of fourteen days which may be comprised in its one session or in two o more successive sessions and shall, unless some later date is appointed, take effect from the date of their publication in the gazette subject to such modifications or annulments as the Houses of the Legislature may agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder (Refer U.P. amendment).

# CHAPTER XII-A

# **PENALTIES**

#### 78. Penalties

(1) Following shall be the punishments for various offences committed under this Act and referred to in the respective sections;

Section 24 (3) fine which may extend to rupees two thousand;

#### Section 26

with imprisonment which may extend to three years or with fine which may extend to ten thousand rupees or with both; provided that in case of an offence committed under section 26 (1) (a), (b), (g), (h) (j), (k), if the value of the forest produce illegally removed or the damage caused exceeds the value of ten thousand rupees; the minimum fine shall not be less than twentyfive thousand rupees and may extend to two lakh rupees and the term of imprisonment, which shall be mandatory, shall not be less than six months and may extend to five years;

provided further that in cause of second and subsequent offence mentioned in the foregoing proviso, the term of imprisonment shall be suitably extended.

Section 27A Section 79A imprisonment which may extend to one month.

Section 33. imprisonment which may extend to three years or with fine which may extend to five thousand rupees or with both provided that in case of offence committed under clause (a), (b) or

(c) of sub-section (i) of section 33, if the value of forest produce illegally removed or damage otherwise caused thereby exceeds the value of twentyfive thousand rupees, the fine may extend to one lakh rupees and the term of imprisonment, which shall be mandatory, shall not be less ten six months;

provided further that in case of second and subsequent offence mentioned in the foregoing proviso, the term of imprisonment shall not be less than one year and the amount of fine may extend to two lank rupees. On failure of the offender to pay the fine, the term of imprisonment shall be suitably extended.

Section 34AA, Section 35, Section 40J (2): imprisonment which may extend to three years or fine which may extend to five thousand rupees or both.

Section 38 G.VIII: fine which may extend upto five thousand rupees.

Section 40.J (1) imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees or with both, and in case of a continuing contravention, with an additional fine which may extend to one thousand rupees for every day during which such contravention continues after conviction for the first such offence;

provided that where such contravention involves forest produce valued at more than ten thousand rupees the minimum imprisonment shall be one month and the fine not less than twentyfive thousand rupees and where the forest produce is valued at more than fifty thousand rupees, the minimum imprisonment shall not be less than six months and the fine not less than one lakh rupees.

#### Section 42.

(i) where value of the torest produce in respect of which an oftence has been committed exceeds ten thousand rupees, with

imprisonment which shall not be less than one morth but which shall not exceed three years and with fine which shall not exceed ten thousand rupees (ref A.P. Act);

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both.

Section 51, Section 60A: imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both.

Section 62, Section 69A, Section 79: imprisonment which may extend to one year or with fine which may extend to three thousand rupees or with both.

Section 63: imprisonment which shall not be less than one month and may extend to three years and with fine which may extend to ten thousand rupees.

Section 75: imprisonment which may extend to three years of with fine which may extend to ten thousand rupees or both.

Section 44, Section 79B: imprisonment which may extend to one month or fine which may extend to one thousand rupees or with both

(2) When any person is convicted for an offence under this Ac and the value of forest produce removed or damaged, when being the property of government, exceeds five thousand rupees, the Court trying the offence shall direct that such forest produce seized from the offender and any tool, chains, ropes, plant, machinery equipment, boat, cattle, vehicle, weapon or any other article used in the commission of the offence shall be forfeited o the State Government and any licence, permit. permission held by the offender under the provisions of this Act shall stand cancelled provided that similar order of forfeiture and cancellation may be

issued by the Court for any offence where the value of forest produce is less than or equal to five thousand rupees.

(3) When a person is convicted for an offence under clause (a) or (g) or (h) of sub-section 1 of section 26, or clause (b) or (c) or sub-section (1) of section 33, the Court shall order eviction of the offender from the land in relation to which the offence has been committed and on such order being made, all sheds or structures on such land shall be demolished and if the Court so orders, the crop, if any, standing on the land, shall be seized and confiscated to the State Government.

Orders passed and actions to be taken under this sub-section may be executed by a Police Officer not below the rank of a Sub-Inspector or a Forest Officer not below the rank of Ranger as the Court may direct, (Refer Orissa Act, Kerala Act).

- (4) Any person who in contravention of the provisions of this Act, illegally cuts, destroys, removes or transports any forest produce between sunset and sunrise or after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence, shall be punishable with imprisonment or with a fine or with both which may be double the quantum of the prescribed penalty for the said offence (refer A.P. Act).
- (5) Any person contravening any rules under this Act for the contravention of which no special penalty is provided shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to three thousand rupees, or with both.
- (6) The Court may, if it so deems appropriate award the fine or part thereof, imposed under this section to those persons who have helped in the detection of offence and apprehending of the offender, or both.

# 78A. Persons not to be. released on probation

Notwithstanding anything contained in the Code Criminal Procedure, 1973 (Central Act 2 of 1974) and the Probatic of Offenders Act, 1958 (Central Act 20 of 1958), an offend convicted of any of the offences punishable under sections 40 40D or 40[-1] or 40F or 60A or 63 or with mandato imprisonment, shall not be released under any provision of the Probation of Offenders Act, 1958 (Refer Karnataka Act, section 104.F).

# 78AA. Offences by companies

(1) Where an offence under this Act has been committed by company, every person who at the time of the offence we committed was in charge of and was responsible to the company as well as the company, shall be liable to be proceeded against as punished accordingly:

Provided that nothing contained in this sub-section shared render any such person liable to any punishment provided in the Act if he proves that the offence was committed without knowledge or that he exercised due diligence to prevent to commission of such offence.

(2) Notwithstanding anything contained in sub-section (where an offence under this Act has been committed with consent or connivance or is attributable to any neglect on the profession of any director, manager, secretary or other officer of the compassuch director, manager, secretary or other officer shall also deemed to be guilty of that offence and shall be liable to proceeded against and punished accordingly.

# Explanation: For the purpose of this section-

(a) "company" means any body corporate and includes a fi or other association of individuals; (b) "director" in relation to firm means a partner in the firm. (refer M.P. Saw Mill Act)

# 78B. Attempts and abetment

Whoever attempts to contravene, aids or abets the contravention of any of the provisions of this Act or of any rule or order made thereunder shall be deemed to have contravened that provision of the Act, rule or order, as the case may be (refer section 52, Wildlife (Protection Act, 1972) and shall be liable to punishment accordingly.

# CHAPTER XIII

# **MISCELLANEOUS**

# 79. Persons bound to assist Forest Officers and Police officers.

- (1) Every person who exercises any right, privilege of concession in a reserved or protected or village forest or who is permitted in take any forest produce from, or to cut and remove timber or to pasture cattle in such forest every person in such forest and every person in any village contiguous to such forest who is employed by the Government for services to be performed to the community, shall be bound to furnish without unnecessared delay to the nearest Forest Officer or Police Officer or Revenue Officer any information he may possess in respect of the commission of, or intention to commit, any forest offence, and shall forthwith take steps, whether so required by any Forest Officer or Police Officer or Revenue Officer or not-
- (a) to extinguish any forest fire in such forest of which he has knowledge or information;
- (b) to prevent by any lawful means in his power any fire the vicinity of such forest of which he has knowledge information from spreading to such forest and shall assist ar Forest Officer or Police Officer or Revenue Officer demanding haid;
- (c) in preventing the commission in such forest of any fore offence; and
- (d) when there is reason to believe that any such offence he been committed in such forest, in discovering and arresting the offender.

- (2) Any person who, being bound to do so, without lawful excuse (the burden of proving which shall lie upon such person) fails-
- (a) to furnish without unnecessary delay to the nearest Forest Officer or Police Officer or Revenue Officer any information required by sub-section (1); or
- (b) to take steps, as required by sub-section (1) to extinguish any forest fire in a reserved or protected or village forest; or
- (c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or
- (d) to assist any Forest Officer or Police Officer or Revenue Officer demanding his aid in preventing the commission in such forest of any forest offence, or when there is reason to believe that any such offence has been committed in such forest, in discovering one arresting the offender;
- (i) shall be liable to forfeit all rights, privileges or concessions that he may have enjoyed, in the reserved or protected or villege forest as the case may be, provided that no such order forfeiting such rights, privileges or concessions shall be passed without hearing the person concerned and recording the reasons for such forfeiture. Any such order may be passed by the Divisional Forest Officer and appeal against the same shall lie with the Conservator of Forests of the Circle concerned within a period of sixty days from the passing of the order by the Divisional Forest Officer, or the communication of the same to the person concerned, whichever is later. The order of the Appellate Authority shall be final;
- (ii) notwithstanding forfeiture of any rights, privileges or concessions referred to in this sub-section, he shall also be liable to punishment as prescribed in section 78.

(3) On receipt of any such information refered to subsection (1), the Forest Officer of Police Officer or Revenue Officer, as the case may be shall forthwith take such action as may be appropriate in the circumstances (refer section 84 of Orissa Act).

# 79A. Obligation of officers to assist each other

All officers of the Forest, Police. Revenge and other departments of the State Government shall upon notice given or request made be legally bound to assist each other in carrying out the provision of this Act. Whoever, without lawful excuse, violates the provisions of this section shall be liable to punishment prescribed in section 78 (refer section 50 of Narcotics and Psycho substances Act).

# 79B. Duty of certain officers to assist each other

Every officer of the Government and every Panch, Kotwar or Village Police Officer and Village Officer of whatever description, shall give immediate information to any officer of the Forest, Police and Revenue Department when it may come to his knowledge that a forest offence is intended to be committed, or is being committed, or has been committed, and every such officer of the Government, Panch, Sarpanch, Kotwar or Village Police Officer and other Village Officer who neglects to give such information shall be liable to punishment prescribed in section 78 (refer section 47 of Narcotics and Psycho-substances Act).

80. (Repealed) [It relates to joint property of Government and other persons]

80.A Power of Government. to apply provisions of this Act to certain lands of government. or local authorites

The State Government may, by notification in the official gazette, declare that any of the provisions of this Act shall apply to all or any of lands on the banks of canals, or the sides of roads

or railway lines which are the property of the State or Central Government or a local authority, and thereupon such provisions shall apply to such lands accordingly (refer U.P, Maharashtra and Gujarat amendments).

# 81. Failure to perform service for which a share in produce of Government forests is enjoyed

If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the State Government that service is no loner performed;

Provided that no such share shall be confiscated until the person entitled thereto and the evidence, if any, which he may produce in proof of the due performance of such service, has been heard by an officer duly appointed in that behalf by the State Government.

# 82. Recovery of money due to Government

All money, other than fines, payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest produce, or under any contract relating to timber of other forest produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction, or by invitation of tenders issued by or under the authority of a Forest Officer and all compensation, including compensation payable under section 68, awarded to the Government under this Act, or of expenses incurred in the execution of this Act in respect of such produce may, if not paid when due, be recovered under the law for the

time being in force, as if it were an arrears of land revenue (refe M.P. amendment).

# 83. Lien on forest produce for such money

- (1) When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first change on such produce and such produce may be taken possession of by a Forest Officer, until such amount has been paid
- (2) If such amount is not paid when due, the Forest Office may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.
- (3) The surplus, if any, if not claimed within sixty days from the date of the sale, by the persons entitled thereto, shall be forfeited to Government.

# 84. Land required under this Act to be needed for a purpose under the land Acquisition Act, 1894.

Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.

# 85. Recovery of penalties due under bond

(1) When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, himself by any bond or instrument to perform any duty or Act, or convenant by any duty or Act or convenants by any bond or instrument that be or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything contained in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrears of land revenue.

# (2) If any question arises

- (a) whether there has been a breach of any of the conditions of such bond or instrument;
- (b) as to the sum to be paid for such breach;
- (c) as to the person or persons liable to pay such sum;

the question shall be referred to, and after giving notice to the person concerned and after considering his objections, if any, be decided by an officer not below the rank of Conservator of Forests authorised by the State Government in this behalf and his decision shall be final.

# 85. Saving for rights of Union Government etc.

Nothing in this Act authorises a Government of and State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Union Government or the Government of any other State without the consent of the Government concerned.

86.

- (1) As from the commencement of this Act, every other Act relating to any matter contained in this Act and in force in a State shall, to the extent to which that Act or any provision contained therein corresponds, or is repugnant, to this Act or any provision contained in this Act, stand repealed; provided that such repeal shall not-
- (i) affect the previous operation of the Act so repealed, or anything duly done or suffered thereunder;
- (ii) affect any right, obligation or liability acquired, accrued or incurred under the Act so repealed;
- (iii) affect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability penalty forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture and punishment may be imposed as if the aforesaid Act had not been repealed.

- (2) Notwithstanding such repeal-
- (a) anything done or any action taken under the Act so repealed (including any notification, order, certificate, notice or receipt issued, application made or permit granted) which is not inconsistent with the provisions of that Act be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force at the time such a thing was done or action was taken, and shall continue to be in force, unless and until superseded by anything done or any action taken under this Act;
- (b) every licence granted under any Act so repealed and in force immediately before the commencement of this Act shall be deemed to have been granted under the corresponding provisions of this Act, continue to be in force for the unexpired portion of the period for which such licence had been granted.
- (3) For the removal of doubts, it is hereby declared that any reserved forest, protected forest or village forest declared by a State Government under any Act repealed under sub-section (1) shall be deemed to be a reserved forest, protected forest or village forest, as the case may be, declared by the State Government under this Act (refer section 66 of Wild Life (Protection) Act).

#### CHAPTER XIV

# REGULATORY PROVISIONS

#### 87. Working plans

- (1) The Head of the Department of Forest of the State shall, from time to time, cause to be prepared working plans for reserved and protected forest.
- (2) Every working plan to which this section applies shall regulate, as hereinafter provided, the management of the forest described in the said working plan for such period, not exceeding ten years, as may be stated in the working plan and in conformity with the objectives of management therein stated; provided that every such working plan shall, as for as possible, set aside such forest area as may be deemed sufficient to meet the rights, admitted in such forest and also to meet the bonafide domestic requirements of the neighbouring people in respect of firewood, edible forest produce, cut and baled grass and fodder. on such terms and conditions as may be deemed fit by the State Government.
- (3) Every such working plan, subject to general or specific guidelines which the Central or the State Government may issue from time to time, shall specify with respect to the working period,-
- (i) the silvicultural operations to be carried out;
- (ii) the maximum area from or the maximum quantity of forest produce that may be disposed of, or both, as deemed fit;

- (iii) the conservation and other operations to be carried out; and
- (iv) such other matters as the Head of the Forest Department of the State concerned may deem fit.
- (4) Notwithstanding anything contained in any other Act, every working plan shall be subject to the approval of the State Government and, when so approved, shall have effect according to its tenure from a date specified therein, and shall not be altered save by the State Government on the recommendations of the Head of the Forest Department of the State concerned (Ref. New Zealand Act, section 26).
- (5) Nothing contained in Chapters II and III of this Act shall deem to prohibit any act done or permitted to be done by a Forest Officer in accordance with the approved working plan prescriptions.
- (6) Without prejudice to the rights existing in any reserved or protected forest. no tree shall be felled nor any timber be removed from such forest except in accordance with an approved working plan; provided that where there is no current working plan for a reserved or protected forest on the date of coming into force of this Act, the State Government may, by a special order, permit afforestation of degraded forests which does not involve the cutting and removal of any timber, for a period not exceeding three years from the date of coming into force of this Act.

#### 87. Existing Working Plans etc. to be valid

Fore the purpose of this Act the working plans or the working schemes, as the case may be, duly approved by the State Government before coming into force of this Act shall be deemed to be approved working plans for their period of validity. not exceeding ten years form the date of notification of this Act.

# 88. Prohibition on working in certain areas

Notwithstanding anything contained in Section 87, the Central Government may, by a notification in the official gazette, specify areas of ecological, floral, fauna, geomorphological, silvicultural, zoological, hydrological association or importance and prohibit or regulate felling of trees or harvesting of any other forest produce in such area or suspend pasturage of cattle therein, to enable such area to recover and to revert to a state of nature.

# 89. Appointment of Review Committee by Government of India.

- (1) The Central Government shall set up a Committee of administrators and experts in the field of forest conservation to monitor the implementation of the National Forest Policy as may be declared from time to time and the provisions of this Act and the rules made thereunder and to review and recommend modifications of this Act and the rules made thereunder and matters related and ancillary thereto, as may be deemed necessary from time to time.
- (2) The Committee shall be called the Forest Policy and Law Monitoring Committee and shall, inter alia, consist of-
- (i) The Minister for Environment and Forests, Government of India, who shall also be the chairperson of the Committee.
- (ii) The Inspector General of Forests.
- (iv) Heads of Forest Departments of three states by rotation.
- (v) A representative each, by designation, from the Ministries or Departments of (a) Rural Development, (b) Tribal Welfare and (c) Agriculture, Government of India.
- (vi) Three non-officials possessing requisite expertise representing related disciplines and different regions of the country on a tenure basis.

- (3) The Committee so appointed shall have the power to-
- (i) co-opt members from a particular state or states as social invitees to take part in meetings convened to consider matter relating to such state or states.
- (ii) appoint Sub-Committees to consider any particular subject and submit its recommendation to the Committee for consideration.
- (4) The Central Government shall regulate the procedure for holding the meetings by specifying
- (i) the intervals at which such meeting shall be held;
- (ii) the procedure for the appointment and functioning of Sul Committees and of the Member Secretaries of the Committee are Sub-Committees.

# THE NATIONAL FOREST POLICY

The Government of India presented in parliament in December 1988 the National Forest Policy, 1988. We give below the Minister's speech in parliament on this occasion, followed by the full text of the new policy.

The issue of revision of the Forest Policy formulated in 1952 has been under the active consideration of the Government for some time. In view of the social, economic and ecological importance of forests, considerable thought has to be given to the multifarious implication of the Forest Policy. Although the 1952 Forest Policy aimed at forest coverage of one-third of the total land area of the country, due to various constraints, this could not be attained. Rather, extensive diversion of forest land has taken place for non-forest use. The genetic diversity has also been considerably affected by the destruction of flora and fauna. The Government have increasingly realised the great importance of forests in contributing to the ecological stability of the country. This has necessitated a re-examination of the Forest Policy and giving emphasis to the conservation and ecological aspects.

The salient feature of the new Forest Policy are:

- 1. Maintenance of environmental stability through preservation and restoration of ecological balance.
- 2. Conservation of the natural heritage of the country by preserving the remaining natural forests and protecting the vast genetic resources for the benefit of the posterity.

- 3. Meeting the basic needs of the people, especially fuelwood fodder and small timber for the rural and the tribal people
- 4. Maintaining the intrinsic relationship between forests and the tribal and other poor people living in and around forests be protecting their customary rights and concession on the forests.

The main approach outlined is as follows:

- 1. Existing forest land and forests will be fully protected and their productivity will be improved. Emphasis will be give to enhance forest cover on hill slopes and catchment areas or rivers.
- 2. In order to conserve biological diversity, a network of sanctuaries, national parks, biosphere reserves and other protected areas will be extended and better managed.
- 3. The people will be actively involved in programmes of protection, conservation and management of the forests.

We believe that the new Forest Policy will be able to achieve nature conservation and ecological balance at the same time meeting the essential requirements of the people".

# TEXT OF THE RESOLUTION ON NATIONAL FOREST POLICY, 1988

#### 1. PREAMBLE

1.1. In Resolution No. 13/52-F, dated the 12th May 1952,th Government of India in the erstwhile Ministry of Food an Agriculture enunciated a Forest Policy to be followed in the management of State Forests in the country. However, over the years, forests in the country have suffered serious depletion. This is attributed to relentless pressures arising from ever- increasing demand for fuelwood, fodder and timber; inadequacy of

protection measures; diversion of forest lands to non-forest uses without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. The need to review the situation and to evolve, for the future, a new strategy of forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment. It has thus become necessary to review and revise the National Forest Policy.

#### 2. BASIC OBJECTIVES

- 2.1. The basic objectives that should govern the National Forest Policy are the following:-
- \* Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- \* Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resource of the country.
- \* Checking soil erosion and denudation in the catchment areas of rivers, lakes,reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.
- \* Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- \* Increasing substantially the forest/tree cover in the country through massive afforestation and forestry programmes, especially on all denuded, degraded and unproductive lands.
- \* Meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations.

- \* Increasing the productivity of forests to meet essential nation needs.
- \* Encouraging efficient utilization of forest produce as maximising substitution of wood.
- \* Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimum pressure on existing forests.
- 2.2. The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balar including atmospheric equilibrium which are vital for sustenar of all lifeforms, human, animal and plant. The derivation of directoromic benefit must be subordinated to this principal aim.

#### 3. ESSENTIALS OF FOREST MANAGEMENT

- 3.1. Existing forests and forest lands should be fully protect and their productivity improved. Forest and vegetable conshould be increased rapidly on hill slopes, in catchment areas rivers, lakes and reservoirs and ocean shores and on semi-arrand and desert tracts.
- 3.2. Diversion of good and productive agricultural lands forestry should be discouraged in view of the need for increase food production.
- 3.3. For the conservation of total biological diversity, network of national parks, sanctuaries, biosphere reserves a other protected areas should be strengthened and extendadequately.
- 3.4. Provision of sufficient fodder, fuel and pasture, special in areas adjoining forest, is necessary in order to prevent deplet of forests beyond the sustainable limit. Since fuelwood continuous be the predominant source of energy in rural areas, programme of afforestation should be intensified with special

emphasis on augmenting fuelwood production to meet the requirement of the rural people.

3.5. Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income.

#### 4. STRATEGY

#### 4.1. Area Under Forest:

The national goal be to have a minimum of one-third of the total land of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco- system.

# 4.2. Afforestation, Social Forestry & Farm Forestry:

- 4.2.1. A massive need-based and timebound programme of afforestation and tree planting, with particular emphasis on fuelwood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land, is a national imperative.
- 4.2.2. It is necessary to encourage the planting of trees alongside of roads, railway lines, rivers and streams and canals, and on other unutilised lands under state/corporate, institutional or private ownership. Green belts should be raised in urban/industrial areas as well as in arid tracts. Such a programme will help to check erosion and desertification as well as improve the micro-climate.
- 4.2.3. Village and community lands, including those on foreshores and environs of tanks, not required for other productive uses, should be taken up for the development of tree crops and fodder resources. Technical assistance and other inputs necessary

for initiating such programmes should be provided by the Government. The revenues generated through such programmes should belong to the panchayats where the lands are vested in them: in all other cases, such revenues should be shared with the local communities in order to provide an incentive to them. The vesting, in individuals, particularly from the weaker sections (such as landless labour, small and marginal farmers, scheduled castes, tribals, women) of certain ownership rights over trees, could be considered, subject to appropriate regulations: beneficiaries would be entitled to usufructs and would in turn be responsible for their security and maintenance.

4.2.4. Land laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree-farming and grow fodder plants, grasses and legumes on their own land. Wherever possible, degraded lands should be made available for this purpose either on lease or on the basis of a tree-patta scheme. Such leasing of the land should be subject to the land grant rules and land ceiling laws. Steps necessary to encourage them to do so must be taken. Appropriate regulations should govern the felling of trees on private holding.

#### 4.3. MANAGEMENT OF STATE FORESTS

- 4.3.1. Schemes and projects which interfere with forests that clothe steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forests particularly in areas like Arunachal Pradesh, Kerala, Anadaman & Nicobar Islands, should be totally safeguarded.
- 4.3.2. No forest should be permitted to be worked without the Government having approved the management plan, which should be in a prescribed format and in keeping with the Nationa Forest Policy. The Central Government should issue necessary

guidelines to the State Government in this regard and monitor compliance.

4.3.3. In order to meet the growing needs for essential goods and services which the forests provide, it is necessary to enhance forest cover and productivity of the forests through the application of scientific and technical inputs. Production forestry programmes, while aiming at enhancing the forest cover in the country, and meeting national needs, should also be oriented to narrowing by the turn of the century, the increasing gap between demand and supply of fuelwood. No such programme, however, should entail clear-felling of adequately stocked natural forests. Nor should exotic species be introduced, through public or private sources, unless long-term scientific trails undertaken by specialists in ecology, forestry and agriculture have established that they are suitable and have no adverse impact on native vegetation and environment.

#### 4.3.4. Rights and Concessions

- 4.3.4.1. The rights and concessions, grazing, should always remain related to the carrying capacity of forests. The capacity itself should be optimised by increased investment, silvicultural research and development of the area. Stall-feeding of cattle should be encouraged. The requirements of the community, which cannot be met by the rights and concessions so determined, should be met by social forestry outside the reserved forests.
- 4.3.4.2. The holders of customary rights and concessions in forest areas should be motivated to identity themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primary be for the bonafide use of the communities living within and around forest areas, specially the tribals.
- 4.3.4.3. The life of tribals and other poor living within and mear timests revolves around forests. The right, and concessions enjoyed

by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute located at depots at reasonable prices.

- 4.3.4.4. Similar consideration should be given to scheduled castes and other poor living near forests. However, the area, which such consideration should cover, would be determined by the carrying capacity of the forests.
- 4.3.4.5. Wood is in short supply. The long-term solution for meeting the existing gap lies in increasing the productivity of forests, but to relieve the existing pressure on forests for the demands of railway sleepers, construction industry (particularly in the public sector), furniture and panelling, mine-pit props, paper and paper board etc. Substitution of wood needs to be taken recourse to. Similarly, on the front of domestic energy, fuelwood needs to be substituted as far as practicable with alternate sources like biogas, LPG and solar energy. Fuel efficient "chulhas" as a measure of conservation of fuelwood need to be popularised in rural areas.

#### 4.4. Diversion of Forest Lands for Non-forest Purpose

4.4.1. Forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examination by the specialists from the standpoint of special and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should at least provide in

their investment budget, funds for regeneration/compensatory afforestation.

4.4.2. Beneficiaries who are allowed mining and quarrying in forest land in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practices. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

#### 4.5. Wildlife Conversation

Forest Management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose. It is specially essential to provide for "corridors" linking the protected areas in order to maintain genetic continuity wildlife.

#### 4.6. Tribal people and Forests

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporation should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following:-

\* One of the major causes for degradation of forest is illegal cutting and removed by contractors and their labour. In order to put an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible.

- \* Protection, regeneration and optimum collection of mir forest produce along with institutional arrangements for marketing of such produce;
- \* Development of forest village on par with revenue villages
- \* Family-oriented schemes for improving the status of the tril beneficiaries; and
- \* Undertaking integrated area development programmes meet the needs of the tribal economy in and around the for areas, including the provision of alternative sources domestic energy on a subsidised basis, to reduce pressure the forest areas.

#### 4.7. Shifting Cultivation

Shifting cultivation is affecting the environment as productivity of land adversely. Alternative avenues of inconsuitably harmonised with the right land use practices, should devised to discourage shifting cultivation. Efforts should be mate to contain such cultivation within the area already affected, propagating improved agricultural practices. Area already damaged by such cultivation should be rehabilitated throughout social forestry and energy plantations.

# 4.8. Damage to Forests form Encroachments, Fires and Grazing

- 4.8.1. Encroachment on forest lands has been on the increa This trend has to be arrested and effective action taken to preve its continuance. There should be no regularisation of existing encroachments.
- 4.8.2. The incidence of forest fires in the country is high Standing trees and fodder are destroyed on a large and nature regeneration annihilated by such fires. Special precaution should be a such fires.

be taken during the fire season. Improved and modern management practices should be adopted to deal with forest fires.

4.8.3. Grazing in forest areas should be regulated with the involvement of the community. Special conservation areas, young plantation and regeneration areas should be fully protected. Grazing and browsing in forest areas need to be controlled. Adequate grazing fees should be levied to discourage people in forest areas from maintaining large herds of non-essential livestock.

#### 4.9. Forest-based Industries

The main consideration governing the establishment of forest-based industries and supply of raw material to them should be as follows:

- \* As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individual who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.
- \* No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel fodder and timber requirements of the local population should not be sacrificed for this purpose.
- \* Forest-based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.
- \* Natural forests serve as a gene poll resource and help to maintain ecological balance. Such forests will not, therefore be

made available to industries for undertaking plantation and for any other activities.

- \* Farmers, particularly small and marginal farmers, would be encouraged to grow, on marginal/degraded lands available with them, wood species required for industries. These mails also be grown along with fuel and fodder species of community lands not required for pasture purposes, and be forest department/corporations on degraded forests, no earmarked for natural regeneration.
- \* The practice of supply of forest produce to industry a concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of woo and wood products should be liberalised.
- \* The above considerations will, however, be subject to the current policy relating to land ceiling and land-laws.

#### 4.10. Forest Extension

Forest conservation programme cannot succeed without the willing support and cooperation of the people. It is essential therefore, to inculcate in the people, a direct interest in forests their development and conservation, and to make them conscious of the value of trees, wildlife and nature in general. This can be achieved through the involvement of educational institutions, right from the primary stage. Farmers and interested people should be provided opportunities through institutions like Krishi Vigya Kendras, Trainers' Training Centres to learn agri-silvicultural an silvicultural techniques to ensure optimum use of their land an water resources. Short- term extension courses and lectures should be organised in order to educate farmers. For this purpose, it is essential that suitable programmes are propagated through mass media, audio- visual aids and the extension machinery.

#### 4.11. Forestry Education

Forestry should be recognised both as a scientific disciplinas well as a profession. Agriculture universities and institution

dedicated to the development of forestry education should formulate curricula and courses for imparting academic education and promoting post-graduate research and professional excellence, keeping in view the manpower needs of the country. Academic and professional qualification in forestry should be kept in view for recruitment to the Indian Forest Services and the State Forest Service. Specialised and orientation courses for developing better management skills by inservice training need to be encouraged, taking into account the latest development in forestry and related disciplines.

#### 4.12. Forestry Research

With the increasing recognition of the importance of forests for environmental health, energy and employment, emphasis must be laid on scientific forestry research, necessitating adequate strengthening of the research base as well as new priorities for action. Some broad priority areas of research and development needing special attention are:

- 1) Increasing the productivity of wood and other forest produce per unit of area per unit time by the application of modern scientific and technological methods.
- 2) Revegetation of barren/ marginal/waste/mined lands and watershed areas.
- 3) Effective conservation and management of existing forest resources (mainly natural forest ecosystems).
- 4) Research related to social forestry for rural/tribal development.
- 5) Development of substitutes to replace wood and wood products.
- 6) Research related to wildlife and management of national parks and sanctuaries.

#### 4.13. Personal management

Government polices in personnel management professional forests and forest scientists should aim at enhant their professional competence and status and attracting retaining qualified and motivated personnel, keeping in particularly the arduous nature of duties they have to perforten in remote and inhospitable places.

#### 4.14. Forest Survey and Data Base

Inadequacy of data regarding forest resources is a material concern because this creates a false sense of complacency, princeds to be accorded to completing the survey of forest resources in the country on scientific lines and to updating information this purpose, periodical collection, collation and publication reliable data on relevant aspects of forest management needs to improved with resource to modern technology and equipment

#### 4.15. Legal Support and Infrastructure Development

Appropriate legislation should be undertaken, supporte adequate infrastructure, at the Centre and State levels in orde implement the policy effectively.

#### 4.16. Financial Support for Forestry

The objectives of this revised policy cannot be achievithout the investment of financial and other resources of substantial scale. Such investment is, indeed, fully just considering the contribution of forests in maintaining essential ecological processes and life-support systems and in present genetic diversity. Forest should not be looked upon as a source revenue. Forests are a renewable natural resource. They a national asset to be protected and enhanced for the well-being the people and the nation.

# DRAFT NATIONAL POLICY ON COMMON PROPERTY LAND RESOURCES (CLRs)

The National Wastelands Development Board in the Ministry of Environment and Forests, Government of India, set up a Policy Advisory Group on Distribution of Benefits from Common Lands. Following the first meeting of the group on 9th July 1990, the Ministry asked a sub-group under the Chairmanship of Shri, V.B. Eswaran, Executive Director, SPWD, to draft a paper on the subject of common lands, their development and management including equitable distribution of the benefits of the development, bringing out the issues for policy and practice. Other members of the sub-group were Shri Anil C. Shah of the Aga Khan Rural Support Programme, Ahmedabad, Shri K.B. Saxena, Joint Secretary, Ministry of Rural Development and Shri. J.C. Kala, Deputy Inspector-General of Forests, National Wastelands Development Board.

The draft paper was discussed at a meeting of the Policy Advisory Group in February 1991, when it was decided that it should be widely published, for inviting reactions and suggestions from non-government organisations all over the country. Taking these into account, as well as the views of State Governments, it is expected that the whole subject would be placed before a national level conference for recommending a national policy.

The following extract from the paper prepared by the subgroup contains its essentials. We have also reproduced certain

comments by the NWDB on the draft paper, and the responses them from the Chairman of the sub-group.

Readers would recall that a year ago, with our May-Ju 1990 issue, we brought the text of the S.P.W.D. Foundation D Lecture 1990 by Dr. N.S. Jodha on Rural Common Property. The lecture provided the stimulus to many, including people in the Government, to give serious thought to the subject.

Readers are requested to write to us, and/or to Additional Secretary to the Government of India, Nation Wastelands Development Board, Paryavaran Bhawan, C.G. Complex, Lodi Road, New Delhi-110 003, to convey their reaction comments and recommendations.

In the Indian village scene, the common lands in the form of grazing grounds, catchment areas, village ponds, rivers a streams, their banks and beds, other village wastelands, provide an invisible source of employment, income generation a asset accumulation directly and by complementing the privatesources.

2. In the country, Common Lands (CLs) broadly fall unc the following categories, and are utilised for the purpose indicat against each:

Forest Lands: Environmental stability, preserving natural herital production of fuel, fodder, minor forest produce and small timb for rural population, recreation, etc.

Other Government lands: Building, roads, parks, buffer lands: grazing, fuel gathering etc.

Community Lands: Pasture, grazing, collection of fuelwood fodder, fruit, fibre, food, medicines, thatch material for artisatienen manure, silt, rearing of cattle, threshing, village ponds, expressions of the community of the control of the contro

In India generally all the common lands belong to the State Governments, and even where lands for common use are vested in Panchayats, in many states the Government has the right to resume such lands. Barring the lands which are under the control of the Forest Department, Irrigation Department or the Railways or some other Government departments, all other lands are administered by the authorities of the Revenue Department, under land revenue laws, where provision exists for assignment for public purposes such as grazing, threshing floors, cremation grounds, etc, government lands can also be assigned to private individuals or institutions by the same authority under land revenue laws and policy/executive instructions of State Governments. Where assignments from common lands were made to individuals or for a public purpose (say, grazing), there was generally no follow-up of their management or development.

- 3. The National Forest Policy, 1988 provides the basic objectives and strategy for the management of the existing forests and the forest lands. Guidelines have also been issued by the Ministry of Environment and Forests in their letter dated Junel, 1990 to all state forest secretaries for the involvement of village communities and voluntary agencies for the regeneration of degraded forest lands. However, the problems concerning other government and community lands, hereafter called as common property resource lands (CPRLs), have not been addressed so far and there has been no national or state policy for common lands and their conservation, development and management. The heavy pressure and abuse to which these lands are subjected, coupled with the social structure prevailing in the village make these problems more complex.
- 4. Despite declining support available from common property resource lands (CPRLs), the rural poor continue to depend on them since the opportunity cost of their lower and their access to these degraded lands is less hindered by others. With

passage of time, more and more poor depend upon less and leaproductive common lands remain the inexpensive means support the poor (84 to 100 pet cent poor household depend of fuel, fodder and food items) with no burden on the public exchequer.

- 5. CPRLs contribute significantly, by way of inflows in case or kind, to private farming. They also provide considerable support for sustenance of farm animals used as draught power a well as source of farmyard manure.
- 6. CPRLs also have the potential to contribute a minimum natural vegetation for ecological health.
- 7. Notwithstanding the above, CPRLs have been constantly declining both in extent and productivity. Reduction in areas of CPRLs varying from 30 to 50 percent have been noticed in different states since 1960. Half the resource is badly degraded.
- 8. The principal causes of degradation are:-

#### (i) Population growth

\* both human and cattle, in a situation of absence of technological inputs into CPRLs to improve production of the biomass requirements.

#### (ii) Development forces

- \* monetising of rural economy; neglect by those whose dependence on CPRLs was reduced as a result of changes in the rural economy,
- \* urban influences, diluting the sense of community obligation
- \* breaking up of communities into families and families int individuals, resulting in gradual disappearance of value attached to common lands and consequent collective indifference to CPRLs.

#### (iii) Public interventions

- \* the grow more food campaign, the land reforms of the 1950's and the anti-poverty programmes launched from 1970 led to large-scale distribution of common lands to individuals for cultivation.
- \* indifference of public authorities to protecting the CPRLs encouraged encroachments on a large scale,
- \* vesting and assigning of common lands in panchayats and other bodies eroded the informal authority of village elders and of traditional institutions,
- \* more and more new needs started competing with the traditional ones, consequent to the implementation of development plans, (e.g. common lands diverted for kilns, public works, habitations, etc.)
- \* abolition of grazing tax, levies, compulsory labour for maintenance etc., induced overuse and poor upkeep of common lands. In many cases because of over-exploitation, the lands lost their power of regeneration.

### (iv) Technological changes

- \* it encouraged changed in land use and in turn led to privatisation,
- \* prompted the states to grab most of the benefits, depriving the village community from having a fuller share.

#### (v) Environmental stress

\* drought and floods aggravated degradation of CPRLs.

#### (vi) Others

The right to utilise the produce of CPRL of a particular village, by neighboring villages, has resulted in indifference of the former to manage its CPRLs on a sustainable basis. Similarly, no

restrictions are imposed on the shepherd communities who wander in several villages to utilise and consume products from the CPRLs villages to utilise and consume products from the CPRLs.

- 9. Public Interventions in Greening and Management of PL
- \* A good deal of public intervention has gone into restoring to degraded common lands. But the policies and programmalacked a CPR perspective, and rehabilitation efforts of the remained a State-run project without people's participation.
- \* Since the mandate of such programmes was afforestation tree- planting rather than the development of common property resources, the focus was laid on the production technology where recipes of species of trees, grasses, method of seeding the wastelands, thinning and other management techniques were made available, but nothing was done sensitising the institutions to involve people.
- \* Experts comment that the "CPRs were virtually converted in commercial fields by Social Forestry Projects"
- \* The situation was further compounded as the State oft appropriated the major portion of the resources without making available the fuller benefits to the village communities specially the poor.
- On the assumption that the individuals are more interest and efficient in managing Pls/CPRLs as compared to collect efforts, a scheme of Tree Pattas' was evolved by Government. But owing to the refractory nature of degrad common lands, lack of input support, diversion of land pattadaras for crop cultivation and restriction of access to ex-CPRLs to a very small number of animals and house-ho caused considerable resentment. The Tree Patta Scheme, effect, was a privatisation process, for pattas of 15 or 20 ye would operate in that manner. In many States these pat

were not restricted to people of the village, and could be obtained by persons from other places too.

\* Benefits-sharing was identified as a keyword to involve the community in creation and management of assets on CPRLs. Models for sharing were developed in many States such as Haryana, West Bengal, Gujarat, Uttar Pradesh, Tamil Nadu etc. However, productivity will have to be increased in order to maintain the interest of the people in managing these resources.

Yet, justifications for maintaining the CPRLs in extent and productivity are overwhelming.

# 10. National Policy for Common Property Resource Lands

In view of the accelerated shrinkage and degradation of CPRLs, owing to a variety of forces as explained earlier, it is expedient and desirable to decide upon a National Policy, implementation and management, and backed by public system support, viz., legal, administrative and financial, will lead to productivity on a sustained basis.

#### 11. Objective

The basic objective of the National Policy is to provide support to the people and their production systems through restoration, protection and development of common property resources lands.

#### 12. Goals

In order to achieve this objective the policy sets out the following goals:

\* Meet all the biomass needs of the community, in terms of grazing, fuelwood, small timber, thatching material, medicinal

- plants, etc. and the public purposes like dumping an threshing, ponds, etc.
- \* Income and employment support to the poor at times of vulnerability.
- \* Support for sustenance of farm animals and thereb complement the private resource for agriculture.
- \* Contribute the minimum natural vegetation for ecological health.
- \* Support to agencies and institutions responsible for management of CPRLs in the discharge of their responsibilities efficiently and equitably.

#### 13. Requirements

The existing common lands must be fully protected and their productivity enhanced to meet the rising demands of the community so that the interest of the people to manage them sustained. It is also necessary that CPRLs are clearly demarcate and assigned and used by a particular village that was traditionally depending on it.

#### 14. Protection

Privatisation of CPRLs should be stopped, and exception may be made only for very special considerations of police Government departmental and public sector requirements of lar from CPRLs should be demarcated on the ground and describe in records. The State should have adequate legal authority prevail upon the panchayats and other local bodies for the protection of CPRLs, even to the extent of disqualifying the office-holders of these bodies who themselves do or ab encroachments or are negligent otherwise in protecting commolands.

- \* Changes in the extent and use of CPRLs should be monitored by undertaking periodic ground surveys in order to ensure that the CPRLs do not decline any further. All tree pattas should be reviewed, and the land resumed if conditions of the patta have been infringed.
- \* Accountability should be enforced on all those who are expected to protect the CPRLs. Incentives/disincentives may be provided to this end.

#### 15. Productivity

- \* Inputs of science and technology (S&T) should be applied to enhance the productivity of CPRLs, in quantity and variety consistent with the felt needs of the community.
- Appropriate scientific and technological options should be placed before the village community (gram sabha and its committees) together with implementation packages and costs, for the village people to take a decision on the scope, scale and phasing of its programme and its management. Particularly, in common lands in semi-arid and arid regions the technological inputs must be directed towards controlling erosion and conserving soil and water. An integrated micro-management plan could perhaps be prepared for CPRLs at village level on watershed basis. This micro-management plan should be put of the village community and its committees - broadly on the analogy of the village forest committees in joint forest management programmes or the village level committees envisaged in the 1st June 199 policy letter of the Environment Ministry governing the use of degraded lands by village communities.
- \* This science and technology input function would need that research institutions and agricultural universities be given specific responsibility to take technological packages to the

- community at village level (more or less like the strategy green revolution from the 1960s).
- \* Any gaps in S & T should be identified, in order to sponse R and D work to meet the same.
- \* Grazing in the CPRLs should be regulated by the communit This may include imposition of grazing fees and rotation grazing wherever feasible. Measures to encourage stall-feeding and upgradation of livestock may be promoted and adopted
- \* A portion of the revenue generated from the CPRLs should le reinvested for their sustainable development are management.

#### 16. Peoples participation

- \* Formation of user groups may be promoted for the management of a CPRLs.
- \* The village community/user group should be involved a planning regeneration and management of CPRLs, including distribution of benefits.
- \* The principle of equity in access and usage regulation must be enforced.
- \* Voluntary agencies and NGOs of established credibility are commitment may be involved as interface between Government and a local community for the management are development of common lands. They should, however, act a facilitators rather than implementers.

#### 17. Training and documentation

Orientation programme for legislators, panchayat member as well as Government implementers should be oranised emphasise the need, relevance and scope for protection are development of CPRLs.

Documentation of case studies and success stones of Government officers, research organisations and VAs, as also critical analysis of failures, for drawing lessons, may be encouraged.

18. Technical problems and constraints surrounding community management may be studied through action-oriented research.

#### 19. Financial support

The objective and goals of the National Policy on CPRLs cannot be achieved without making funds available on a substantial scale. The support to the people and their production systems, which the development and efficient management of CPRLs would provide, would fully justify the investment.

At the village level, however, many activities can be implemented without the full-time employees which a Government department would need. Monitoring and execution by village communities (without the usual procedures of tenders or contracts even for small jobs), combined with social audit at the village level, would probably reduce costs considerably and also make for efficiency of execution.

The NWDB made the following points on the report (draft Paper) of the Sub-Group

- (i) The goal of the policy should be to meet the biomass needs of the community to the extent possible and not all biomass needs since a part of these needs is met from forest areas and private lands.
- (ii) Creating of conditions to sustain the interest of people to manage common lands is as important as increasing the productivity of the common lands.
- (iii) That, although protection is rightly emphasized in the report, there was need to give stress to a multi-disciplinate approach in managing the common lands.

- (iv) Regulation of live-stock, in addition to regulation grazing, needed to be mentioned in the report as contributing enhancing the productivity of common lands.
- (v) To ensure re-investment on the common lands, the fit charge on the revenue generated from common lands could be the of ploughing it back on the common lands.
- (vi) In regard to participation, cooperatives could also mentioned as institutions for ensuring people's participation.
- (vii) The report needed to specify a mechanism at to Government level to maintain an inventory of common land their status, productivity, etc.
- (viii) The report should bring out the need to suppoinstitutions and social and economic forces that would help ensurthe collective management of the common lands.
- (ix) The new stress on employment generation for building up and maintaining community assets could be stressed as potential for developing and upgrading the common lands.

The following is the response by the Chairman of the Sub-Group, Shri V.B. Eswaran to these comments:

The goal of the policy has to be to meet all biomass need of the community, meaning all kinds of biomass; and to the maximum extent where there is not enough common land, I do not wish to bring in the forests as a source of a supply for the biomass needs, for the reason that the majority of a village in the country, I imagine, do not have forests next door. Where degrade forest lands are made available to village communities for growing their boimass needs, as envisaged in the Environment Ministry policy letter of 1st June 1990, I would expect the village lever organisation to take these into account while planning the development of common lands outside the forest.

May I also point out that different kinds of biomass a needed and used by different sections or strata of the village

communities and unless each section or stratum clearly sees the benefits to be derived from the common lands, they are not going to be keen on protecting them; this is the prime condition to sustain the interest of every section/stratum of the local community and cannot be substituted by any amount of support from the Government to "institutions and social and economic forces". We did not stress or dwell upon a multidisciplinary approach in the efforts at improving common lands' productivity, but we have talked about an integrated micromanagement plan. The phrase 'multi-disciplinary approach' is officialese and no village level organisation should need such officialese to get on with its work.

Regulation of livestock should not be a prescription in the policy, but one would expect it to follow as a result of discussion and decisions in the local community organisation and by individual families in the village, as a consequence of assured availability of fodder. There is also a suggestion that reinvestment of revenues from common lands development should be compulsorily a first charge on the revenues. Our approach has been to leave all such matters to the good sense of the village level organisation and not to give top-down prescriptions.

If the village level organisation for the development of common lands is to be a co-operative society as the village community may decide, we should have no quarrel with it. We would not even insist that it should be a registered body of any kind, for that matter.

Whether the Government maintains and inventory of common lands would not be, we think, a matter for a policy statement on common lands.

A point has been made that the new stress in the Government on employment - generation could well be drawn upon for upgrading common land resource. No one can quarrel with this very useful suggestion. One may only note the caution

that Government programmes of this kind tend to shrink expand in financial terms depending on the preferences a constraints upon the Government from time to time, and are a quite often constrained by the procedural requirements built it such programmes.

As regards the distribution of the products of developme of common lands, our approach has been that this should be I to the village level organisation, and they need not be given a of prescriptions. Firstly, no prescriptions will apply equally in villages in the light of their population make-up, livestock need the productive potential or the extent of common lands, escondly, we believe that these matters can best be dealt with the village level, unfettered by top-down rules. However, we had made it clear in para 16 of the Draft Paper, for instance, that the principle of equity in access and usage regulations must enforced. It should be read with para 13 of the Draft Paper, while refers to meeting the biomass needs of the community, income an employment support to the poor, and also sustenance of far animals.

"When any environmental issue is probed to its origins, it reveals an inescapable truth-that the root cause of the crisis is not to found in how men interact with nature, but in how they interact with each other; that to solve the environmental crisis we must solve the problem of poverty, racial injustice and war; that the deto nature which is the measure of the environmental crisis, cannot be paid, person by person, in recycled bottles or ecologically south habits, but in the ancient coin of social justice."

Barry

Commoner

in Ecology & Soci

Action

#### NO.6-21/89-P.P GOVERNMENT OF INDIA

Ministry of Environment and Forests

Department of Environment, Forests and Wildlife
Paryavaran Bhavan, C.G.O. Complex, B-Block

Lodi Road, New Delhi. Dated: 1st June, 1990

To,

The Forest Secretaries (All States/UTs)

Subject: Involving of village communities and voluntary agencies for regeneration of degraded forest lands.

Sir,

The National Forest Policy, 1988 envisages people's involvement in the development and protection of forests. The requirements of fuelwood, fodder and small timber such as house building material, of the tribals and other villagers living in and near the forests, are to be treated as first charge on forest produce. The policy document envisages it as one of the essentials of forest management that the forest communities should be motivated to identify themselves with the development and protection of torests from which they derive benefits.

In a D.O. letter No. 1/188 TMA dated 13th lanuary, 1989 to the Chief Secretary of your State, the need for working out the modalities for giving to the village communities, living close to the forest land, usufructory benefits to ensure their participation in the afforestation programme, was emphasized by Shri K.F. Geethakrishnan, the then Secretary (Environment and Foresta).

- 3. Committed Voluntary Agencies /NGOs, with proven tracerord, may prove particularly well suited for motivating as organising village communities for protection, afforestation, and development of degraded forest land, especially in the vicinity habitations. The State Forest Department's Social Forest Organization ought to take full advantage of their expertise as experience in this respect for building up meaningful people participation in protection and development of degraded forelands. The Voluntary Agencies/NGOs may be associated interface between State Forest Departments and the local villacommunities for revival, restoration and development of degrade forests in the manner suggested below:
- i) The programme should be implemented under arrangement between the Voluntary Agency/NGO, to village community (beneficiaries) and the State Fore Department.
- ii) No ownership or lease rights over the forest land should given to the beneficiaries or to the Voluntary Agency/NG Nor should the forest land be assigned in contravention of the provisions contained in the Forest (conservation) Act, 1980.
- iii) The beneficiaries should be entitled to a share in usufructs the extent and subject to the conditions prescribed by the State Government in this behalf. The Voluntary Agency/NG should not be entitled to usufructory benefits.
- iv) Access to forest land and usufructory benefits should be on to the beneficiaries who get organized into a villaginstitution, specifically for forest regeneration and protection. This could be the panchayat or the Co-operative of the village with no restriction on membership. It could also be a Village Forest Committee. In no case should any access or tree patt be given to individuals.
- v) The beneficiaries should be given usufructs like grasses, log and tops of branches, and minor forest produce. If the

successfully protect the forests, they may be given a portion of the proceeds from the sale of trees when they mature. The Government of West Bengal has issued orders to give 25% of the sale proceeds to the Village Forest Protection Committees. Similar norms may be adopted by other States.

- vi) Areas to be selected for the programme should be free from the claims (including existing rights, privileges, concessions) of any person who is not a beneficiary under the scheme. Alternatively, for a given site the selection of beneficiaries should be done in such a way that any one who has a claim to any forest produce from the selected site is not left out without being given full opportunity of joining.
- vii) The selected site should be worked in accordance with a Working Scheme, duly approved by the State Government. Such scheme may remain in operation for a period of 10 years and revised/renewed after that. The Working Scheme should be prepared in consultation with the beneficiaries. Apart from protection of the site, the said Scheme may prescribe requisite operations, eg. inducement to natural regeneration of existing root stock, seeding gap filling, and wherever necessary, intensive planting, soil-moisture conservation measures etc. The Working Scheme should also prescribe other operations eg. fire-protection, maintenance of boundaries, weeding, tending, cleaning, thinning etc,
- (viii)For raising nurseries, preparing land for planting and protecting the trees after planting, the beneficiaries should be paid by the Forest Department from the funds under the Social Forestry Programme. However, the village community may obtain funds from other Government agencies and sources for undertaking these activities.
- (ix) It should be ensured that there is no grazing at all in the forest land protected by the village community. Permission to cut and carry grass free of cost should be given so that stall feeding is promoted.

- (x) No agriculture should be permitted on the forest land.
- (xi) Along with trees for fuel, fodder and timber, the village community may be permitted to plant such fruit trees a would fit in with the overall scheme of afforestaton, such a aonla, Imli, mango, mahua, etc. as well as shrubs, legume and grasses which would meet local needs, help soil an water conservation, and enrich the degraced soils/land. Eve indigenous medicinal plants may be grown according to the requirements and preferences of beneficiaries.
- (xii) Cutting of trees should not be permitted before they are rip for harvesting. The forest dept. also should not cut the tree on the forest land being protected by the village communitie except in the manner prescribed in the Working Scheme. I case of emergency needs, the village communities should be taken into confidence.
- (xiii) The benefit of people's participation should go to the village communities and not to commercial or other interests which may try or other interests which may try to derive benefit is their names. The selection of beneficiaries should, therefore be done from only those families which are willing to participate through their personal efforts.
- (xiv) The Forest Department should closely supervise the works. the beneficiaries and/or the Voluntary Agency/NGO fail of neglect to protect the area from grazing, encroachment or do not perform the operations prescribed in the Working Scheme in a satisfactory manner, the usufructory benefits should be withdrawn without paying compensation to anyone for an work that might have been done prior to it. Suitable provisions in the Memorandum of Understanding (MOU) for this purpose should be incorporated.

Sd/(Mahesh prasad)
Secretary to Government of India.

## Copy for information and necessary action to :-

- 1. Principal Chief Conservator of Forests/Chief Conservator of Forests (All States/ UTs).
- 2. Additional Secretary, National Wasteland Development Board, Ministry of Environment and Forests, New Delhi.
- 3. Chief Conservator of Forests (Central) of all Regional Offices located at: Bhubaneshwar, Bangalore, Bhopal, Shillong, Luchnow, Chandigarh.
- 4. All DIGFs including N.W.D.B., New Delhi.
- 5. All Officers of the Ministry of Environment and Forests.

Sd/-(K.M. Chadha) Joint Secretary to GOvt. of India.

### Copy for information to the:-

- 1. Secretary (Co-ordination), Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.
- 2. Secretary, Department of Rural Development, New Delhi.

Sd/(K.M. Chadha)
Joint Secretary to Government Of India.

## Forest (Conservation) Act, 1980 Amended

The Forest (Conservation) Act 1980 has been amended by a la passed by Parliament in December 1988. We give below the Statement of Objects and Reasons for the amendments as given be the Minister in November 1987 with the amending Bill. We also give the text of the Act as it stands after the amendments. The amendments (marked\*) will come into force on a date to be notified by the Central Government.

### Statement of Objects and Reasons

"The Forest (Conservation) Act, 1980 was enacted to provide for the conservation of forests by checking the indiscriminate diversion of forest land for non-forest purposes.

2. The guidelines issued for implementation of the provisions of the Act regarding cultivation of various cash crop to be treated as non-forest purposes had not been strictly followed Section 2 of the Act the Act is, therefore, proposed to be amended so as to provide that the leasing of forest land or portion thereof to private persons or any authority, corporation, agency or any other organisation not owned, managed or controlled by Government and clearing of trees which have grown naturally in any forest land or portion thereof for the purpose of using it for reafforestation also will require prior approval of the Central Government. The scope of the existing definition of "non-forest purposes" is being expanded so as to include therein also cultivation of tea, horticultivation of tea, coffee, spices, rubber palms, oil-bearing plants, horticultural crops and medicinal plants. A penal provision for contravention of the provisions of the Activity.

by any authority, individual or institution is also being incorporated in the Act."

## Text of the Forest (Conservation) Act, as it stands today

- 1. Short title, extent and commencement.
- (1) This Act may be called the Forest (Conservation) Act, 1980.
- (2) It extends to the whole of India except the State of Jammu and Kashmir
- (3) It shall be deemed to have come into force on the 25th day of October, 1980.
- 2. Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing:-

# Restriction on the dereservation of forests or use of forest land for non-forest purpose

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose.
- \*(iii) that any ferest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled any Government
- "(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion for the purpose of using it for reafforestation".

\*Explanation - for the purpose of this section "non-forest purpos means the breaking up or clearing of any forest land or portic thereof for-

- (a) the cultivation of tea, coffee, spices, rubber, palms, or bearing plants, horticultural crops or medicinal plants;
  - (b) any purpose other than reafforestation,

but does not include any work relating or ancilliary conservation, development and management of forests and willife, namely, the establishment of check-posts, fire lines, wirelest communications and construction of fencing, bridges and culvert dams, waterholes, trench marks, boundary marks, pipelines of other like purposes".

### Constitution of Advisory Committee.

- 3. The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to-
- (i) the grant of approval under section 2; and
- (ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

### Penalty for contravention of the Provisions of the Act.

\*3A. "Whoever contravenes or abets the contravention of any of the provisions of section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

## Offences by Authorities and Government Departments.

- \*3B. (1) Where any offence under this Act has been committed-
- (a) by any department of Government, the head of th department; or

was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

where an offence punishable under the Act has been committed by a department of Government or any authority referred to in thuse (h) of sub-section (1) and it is proved that the offence has been committed with the consent of connivariant of, or is attributable to any neglect on the part of any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (h) of sub-section (1), such officer or persons shall also be deemed to be another that offence and shall be liable to be proceed against and punished accordingly."

Power to make rules.

- I) The Central Government may, by notification in the Official Cazette, make rule for carrying out the provisions of this Act.
- Every rule made under this Act shall be find as soon as may be after it is made, before each House of Parliament, while it is in action, but a total period of thirty days which may near promised in one session or in two or more successive sessions, and if herem the equity of the account numericately following the

session or the successive sessions aforesaid, both Houses agree making any modification in the rule or both Hoses agree that rule should not be made, the rule shall thereafter have effect of in such modified form or be of no effect, as the case may be; however, that any such modification or annulment shall without prejudice to the validity of anything previously dunder that rule.

#### Repeal and saving

- 5.(1) The Forest (Conservation) Ordinance, 1980 is her repealed.
- (2) Notwithstanding such repeal, anything done or any actaken under the provisions of the said Ordinance shall be deer to have been done or taken under the corresponding provision this Act.

## REGENERATING THE COMMONS

A statement signed by over a hundred noted citizens of India including natural and social scientists, planners. thinkers, politicians activists, environmentalists, Government officials, diplomats and others.

India is primarily a land of villages, a good proportion of whose inhabitants produce or earn barely enough to purchase the food they need. With access to food itself a serious problem, a majority of villagers cannot afford to pay for their other biomass needs. The needs are considerable quantities of fuel, fodder, small timber, thatch, and organic manure whose continued availability is absolutely critical to most rural households. These needs are met partly from agricultural wastes like cotton sticks and paddy straw, but more importantly from the produce of common land. The dependence on common lands is even more acute among those sections of the rural population whose mode of livelihood does not depend on cultivated lands, yet whose dependence on biomass resources is total- e.g. shepherds and artisans.

The health of the plant-cover of these common lands is, therefore, critical to the quality of life in hundreds of millions of Indians. Unfortunately, this issue, has received little attention from planners and politicians. In fact, one could argue that Government policy has itself been largely responsible for the continuing degradation of those lands. In the last century and a quarter, these lands, earlier under de facto control of village communities, have been progressively taken over by the state; prior to this takeover there did exist a widespread network of village communities guarding and managing these resources effectively. But at that

time, these communities had the right to exclude outsiders fro their community lands and to punish any of their own memb who disobeyed the community regulations for the management such lands. The British, by emphasizing state monopoly over for protection and production, took away such authority. The divothus introduced between use and control of resources h disastrous consequences, with the new open access resources bei subject to continued over-exploitation. Unfortunately, this tre has intensified after independence. While the Government h favoured the option of taking more and more lands under control, at the same time, it has greatly intensified commerce forest operations to meet the needs of an expanding forest industries sector. This entire process has been punctuated by burs of widespread conflict between the state machinery and village who feel that their longstanding claims on forest produce has be neglected in favour of meeting urban and industrial demand f forest raw material. These conflicts, which are not likely to aba so long as the present system continues, have had an adver impact on the natural environment.

While our common lands are getting progressive degraded, most rural households continue to be crucial dependent on biomass resources for their survival. Regenerating the commons is, therefore, one of the major development challenges of the day. Unfortunately, there are forces in motion for the privatisation of these lands and their further alienation frow those whose dependence on them is the most acute. Thus some State Governments are handing over common lands to joint section companies for the exclusive purpose of growing industrial ramaterial for the private sector. At the same time, the privatisation of such lands within the village is also no solution, for experience has shown that such transfers ultimately end up benefiting a small class of richer landowners at the cost of the bulk of the villager

Neither increased state control nor privatisation (under whatever guise) are therefore a solution to the biomass crisis of the majority of our rural population. We believe that the only ecologically sustainable and socially just option, especially in the long run, is to design an effective system of community management based on local control. Despite the increasing fragmentation within village society itself, the establishment of a decentralized, participatory system of forest management is the only way out. Research has shown that for both bureaucracy and industry, there are powerful disincentives under the present political-adiministrative system which inhibit the ecologically sustainable management of common lands. In fact, the only people whose self-interest is firmly linked to the good management of common lands are the local landless, the small and marginal farmers, the pastoral nomads, and the basket weavers and other artisans and among all these social groups, it may be pointed out that it is the women folk who presently bear the brunt of the shortages, and are also most awake of the needs to regenerate the commons. It is this self-interest that could ultimately save those lands and the people themselves, if it can be channelized properly. This is a difficult task, for these people are presently disorganied and with little political and economic clout. But it must be done. We, the undesigned, believe that the time has come for a major public debate which will come up with appropriate legal and institutional mechanisms, to ensure that our common lands are effectively integrated with the lives and livelihood of the poorer sections of the rural population. This debate, as indeed the more serious job of regenerating the soils, the water cycle and the vegetation of the commons, will require the participation of all concerned sections of our society-apart from the concerned villagers themselves, natural scientists, social scientists, voluntary agencies, politicians and Government officials.

### CORPORATE GREENING

Even granting that the conservation of the environment is movement whose time has come, there is no need for the ministe of state handling this portfolio, Mr. Kamal Nath, to play th impatient knight in a sparkling new green armour. He appear anxious to reverse the official policy over the past four year which discouraged companies from being allotted wastelands t meet their needs of pulpwood and timber. The forest policy ratified under Rajiv Gandhi three years ago, rightly cautioned against the supply of wood to industries at highly subsidised rates Environmentalists have been uneasy about companies operating captive plantations as an alternative because this would amoun to the virtual privatisation of the commons. Indeed, the verdefinition of wasteland in this country is somewhat questionabl because there is hardly a niche in which people are eithe harvesting some natural produce or grazing their animals. Th objection is even greater, as Mr. Kamal Nath found recently during consultations with foresters as well as non-governmenta organisations, when degraded forest lands are sought to b converted into plantations for industries. This is precisely wha happened when the Biral-owned Harihar Polyfibres entered into joint venture with the Karnataka Government to take over some 30,000 hectares of village grazing land to plant eucalyptus, which it required as raw material for artificial fibre. Thanks to spirited resistance by villagers and environmentalists, the entire projec had to be abandoned after a few years.

At the same time, the forest policy does stress the need for industries to become self-reliant in meeting their pulp and timber needs. With devaluation, this import Bill is likely to soar to Rs. 2,500 crores by 1995 and apart from the outgo involved, there is the moral dilemma of turning a blind eye to the destruction of the forest cover of neighbouring countries in the process. While there is a strong case against captive plantations, there may be some scope for encouraging farmers' co-operatives, as some companies have already been doing. Here again, Mr. Kamal Nath's enthusiasm, seems to be getting the better of him. He wants each such cooperative to occupy about 40 hectares, which may only turn out to be plantation in another guise, it would be both ecologically and economically better to invite farmers to form producers' co-operatives, somewhat like the dairymen of Anand in Gujrat. The company can provide saplings, know-how, credit and in return, would be assured of a local supply of wood at assured prices. In this manner, there would be greater dependence on local species and even small farmers would be able to supplement their incomes without converting their entire holdings into plantations.

- Editorial, Times of India, 14-9-1991

## PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Subject: Karnataka Pulpwood Limited, winding up of-Regarding.

#### PREAMBLE:

In Government Order No. FFD 86 FPC dated 13-7-1984 read with Government order of even number dated 9-8-1984, formation of a Joint Sector Company by the Karnataka Forest Plantation Corporation (now Karnataka Forest Development Corporation and M/s. Harihar Polyfibres Ltd., was approved. The authorised share capital was fixed at Rs. 200 lakhs to be contributed by Karnataka Forest Development Corporation and M/s. Harihar Polyfibres Ltd., in the ratio of 51:49. In Government Order No AHFF 119 FPC 85 dated 30-4-1986 Government assured to stand guarantee for the loans to be raised by this Joint Sector Company from the Commercial Banks through NABARD and also approval was given to release 30,000 hectares of land on lease basis to the Company on a lease rent of 12% of the produce.

A public interest writ petition has been filed by several organisations before the Supreme Court challenging the lease or lands to the Company. In its order dated 24-3-87 further in its interim orders dated 26-4-1988 and 12-6-1989, the Supreme Court ordered to release a total of 6000 hectares of land in favour of the Company. As on the date of issue of stay order by the Supreme Court a total of 3590.38 hectares of land has been handed over to the Company Including 6000 hectares of land ordered to be released by the Supreme Court in its interim orders, a total land of 9591 hectares has been handed over to the Company which has been appended to the schedule of the lease agreement.

Th Forest Conservation Act, 1980 was amended with effect from 15-3-1989, according to which, without the prior approval of Government of India no forest land can be assigned to private person or any Authority, Corporation or agency not owned/managed or controlled by Government. Karnataka Pulpwood Limited, is not a company owned/managed or controlled by the Government directly. Therefore, the Forest Conservation Act, 1980 will apply to lease of lands to Karnataka Pulpwood Ltd. As a consequence, concurrence of Government of India would become essential for use of forest land by Karnataka Pulpwood Limited for non-forest purpose viz., industrial purpose. Under the present circumstances, such concurrence would be nearly impossible to obtain which will render the functioning of Karnataka Pulpwood Ltd., very difficult. Secondly, there are agitations by the public against the allotment of land to Karnataka Pulpwood Ltd. In view of the above, the question whether to continue the existence of Karnataka Pulpwood Ltd., was under the examination by the Government. Accordingly, the following orders are issued.

ORDER NO. AHFF24 FPC 90, BANGALORE, DATED: 24th OCTOBER, 1991

After careful consideration the Government are pleased to order:

- a) to wind-up Karnataka Pulpwood Ltd., a Joint Sector Company. The Company is directed to take steps in this connection following prescribed procedures under Companies Act, 1956.
- b) That all the Assets and Liabilities of the Karnataka pulpwood Limited, and any guarantee given by the Government to Karnataka Pulpwood Limited for raising loans are transferred to Karnataka Forest Development Corporation Limited.

- c) Karnataka Forest Development Corporation is directed to settle obligations contained in promoters agreement amicably through the dialogue between the promoters or in terms of arbitration clause in case of any disputer between the parties.
- d) Karnataka Forest Development Corporation is directed to absorb the staff of Karnataka Pulpwood Limited in Karnataka Forest Development Corporation.
- e) to return the equity amount to M/s Harihar Polyfibres Ltd. The question regarding payment of interest on equity has to be negotiated and settled between the promoters viz., Karnataka Forest Development Corporation and M/s. Harihar Polyfibres.

By order and in the name of the Governor of Karnataka Sd/(M.S.Srinivas Babu)
Under Secretary to Government
Animal Husbandry, Fisheries & Forest Development

#### TO,

- 1) The Accountant General-I&II, Karnataka, Bangalore.
- 2) The Principal Chief Conservator of Forest-I&II, Aranya Bhavan, Malleshwaram, Bangalore.
- 3) Chief Conservator of Forest (General)/(Development) Aranya Bhavan, Malleswaram, Bangalore.
- 4) Chairman&Managing Director, Karnataka Fores Development Corporation, Vanavikas, Malleswaram Bangalore-3.
- Joint Managing Director, Karnataka Pulpwood Limited Bangalore.
- 6) Finance department (Expn-IV), Vidhana Soudha, Bangalore.

- 7) Director General, Karnataka State Bureau of Public Enterprises, Bangalore.
- 8) Under Secretary to Government, Department of Cabinet Affairs (Cabinet).
- 10) P.S. to Hon'ble Minister of State for Forest.
- 11) Section Guard File (12) Weekly Gazette (\*) Spare Copies.

### THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) No. 35 OF 1987

#### ORDER

This is a public interest litigation. The main complaint of the petitioners is that an area of 30,000 hectares of reserved/minor forest and C&D class lands had been handed over to a Joint Sector Undertaking called the Karnataka Pulpwood Limited for the purpose of developing the area as a plantation for producing raw material for the paper industry. The petitioners complain that the conversion of the land for the said purpose would upset the ecological balance of the area and affect the livelihood of persons who depend upon the produce of the forests. One of the other complaints is against the formation of a Joint Sector Company to take over the said land.

The state has now produced before us an affidavit together with a Government Order dated 24th October, 1991 stating that a decision has been finally taken by the State Government to wind up the aforesaid Karnataka Pulpwood Ltd. It is further stated in paragraphs 6 and 7 of the affidavit as follows:-

6) It is further respectfully submitted that the produce realised from the planted area that would be taken over by the Karnataka Forest Development Corporation Limited would be sold by public auction as per the present policy of the

Government. So, the produce will go to the public and will not go for any monopoly supply thereby, it will be available to the public.

7) It is respectfully submitted that out of the total extent of 30,000 hectares sanctioned by the Government as well as the Financing Agency, which was under implementation by the Karnataka pulpwood Limited only 8,542 hectares have been planted. No further area shown to the Karnataka Pulpwood Limited will be planted by the Karnataka Forest Development Corporation Limited. It further submitted that the Karnataka Pulpwood Limited is being taken over by the Karnataka Forest Development Corporation Limited on "as is where is basis".

The averments in the affidavit and the Government Order show that the Company is being wound up and 8,524 it tares of land handed over to the company will be taken over by the Karnataka Forest Development Corporation Limited which is a fully State Government owned Corporation and the produce from the said area of 8,542 hectares would be available to the public. The rest of the area under the Sanction Order will be dealt with according to the Forest Conservation Act, 1980 and other relevant laws. In this respect, pargargph 4 of the affidavit is relevant. It reads:-

"It is further respectfully submitted that regarding forest lands, the village community have been given certain rights and privileges to graze their cattle and to collect dry firewood. The Government of India in its letter No. 6-21-89 p dated 1-6-1990 has, in fact, advocated the utilisation of the degraded forests for the protection and development of such forests by the surrounding village community so as to benefit the village community. The Government of Karnataka is taking a decease shortly on the

advice of the Government of India in this direction as the same under examination by the State Government'.

Counsel for the State Government Mr. Bhat submits that to Govt. Order and the averments contained in the affidavit product before us today ought to give sufficient assurance to the petitioner that their demands have been met by the state. Counsel submit that if the petitioners have any other complaint in regard to the individual rights, it will be open to them to agitate such question before the appropriate authorities under the relevant statutes.

The affidavit and the Government Order produced beforus shall form part of the record. In the light of what is stated the affidavit and the Order of the Government the writ petition has become infructuous. It is however open to the petitioners agitate individual complaints, if any, before the appropria statutory authorities. The petition is accordingly disposed of.

In the light of this judgemeent, the contempt petitions a dismissed and all other interlocutory petitions are disposed of.

> Sd/-(T.K. Thoumman)

New Delhi 26th March, 1992

> Sd/-(S.C. Agarwal)

## AN OPEN LETTER TO THE PRIME MINISTER OF INDIA

July 22, 1994

Dear Shri Narasimha Raoji,

We are writing this letter to bring to your notice certain developments reported recently in the press which will seriously affect the future of our forests and of those millions of people who are directly or indirectly dependent on these forests for their survival.

The Ministry of Environment and Forests is, reportedly, once again proposing to open up degraded forest lands for exploitation by industrial and commercial interests. This is despite the fact that such an opening up would be a violation of the letter and spirit of not only the National Forest Policy of 1988, but also of various other policy statements of the Government of India from time to time.

The diversion of disgraded forest lands to the industry would mean displacing the millions of poor people who depend on these lands for their basic needs of fuel, fodder and other biomass. Not only would these people be further impoverished but they would be forced to degrade the remaining forests, which are already under great pressure.

Besides, these degraded forests are a part of the already inadequate forest land, which is far below the stipulated 33%. The purpose of the Government, for many years, has been to regenerate and reforest this land with natural, mixed, forests so that the ecological security of the country and its biodiversity are safeguarded. Diversion of this land for short rotation commercial plantation will very seriously affect the biodiversity holdings of

the nation and be contradictory to the stand and leadership Inc provided in Rio in 1992, while successfully negotiating Convention on Biological Diversity.

Efforts over the last decade, both by the Government a by the NGOs, have resulted in a growing movement of commun initiatives for planting trees and protecting forests. Indiachievements in promoting joint forest management and fa forestry have not only given inspiration to many other countri

By opening up forest lands to industry, and thereby setting the industrial sector as a competitor to rural and trib communities, and the small farmer, we would effectively finish host of fledgling community initiatives. If the industry us Government land to grow its own raw materials and to sell the surplus in the market, who will buy from the farmers?

The most distressing aspect of this whole matter is that vermany better alternatives are available, not encouraged. It already been demonstrated in Uttar Pradesh and Andhra Prade among other places, that the industry can develop successful lir with farmers, who grow and supply the required trees for making matches or paper. Similar arrangements have been working years in the agricultural sector where agro-based industries do nown or control agricultural land but buy from the farmers, with mutual benefits. When such tried and tested solutions a available, why must we insist on pursuing a strategy which

- \* displaces the original users of these forests, who are most tribals and the poor
- \* degrades biodiversity and reduces our natural forest cover
- \* deprives local communities and the farmers of markets f their tree crops

<sup>\*</sup> and is, essentially, unjust, uneconomical, and unsustainable

We urge you to intervene and ensure that the proposal of the Ministry of Environment & Forests is not allowed to become a reality.

With regards.

Shri P.V. Narasimha Rao Prime Minister Government of India NEW DELHI. Yours sincerely,

Shekhar Singh Indian Institute of Public Administration

Arvind Khare Society for the Promotin of Wasteland Development

Ashish Kothari KALPAVRIKSH

Chhatrapati Singh Centre for Environmental Law

Ajoy Bagchi People's Centre for Environment and Development

Kanchan Chopra
Institute of Economic Growth

Ramchandra Guha Madhu Sarin R.N. Kaul Pramod Tyagi R.K. Mukherjee Sunita Rao Amita Baviskar

### PROTEST AGAINST

## GOVT. MOVE FOR PRIVATISATION OF FOREST LANDS Resolution of Janavikas Andolan (JVA)

The National Meeting of Janavikas Andolan (JVA), a forum People's Movement, Organisations and Individuals opposed to the prese development process, held in Madhyamgram, West Bengal on April 16-1 '93.

Views with grave concern another attempt of the Minister for Environme and Forests, Government of India, to change the present policy so the degraded forest lands can be leased out on Joint Sector management based for Captive plantations for industries.

Takes note of the adverse impact on the rural poor of a similar effort Karnataka Government which formed a joint sector company call Karnataka Pulpwood Limited (KPL) in 1984 and which had to be wou up in 1991 recognising the adverse impact on the people. The Karnata Government also filed an affidavit in public interest litigation (W.P. no. of 1987) filed in the Supreme Court by the Samaj Parivartana Samuda (SPS) on behalf of people's movement.

Considers this move of the Ministry of Environment and Forests (ME GOI, a retrograde step.

Calls on the Union Government to drop this step and uphold the presentational Forest Policy and the Forest Conservation Act (FCA) and a urges the Government to take further steps for meaningful participation local people in development of dergaded forest lands and protection forests by building on the earlier policy initiative of the MEF, GOI.

Calls up on all People's Movements, Organisations, Scientists and others bring effective pressure on the Government to drop the new initiative the Minister for Environment and Forests, and also build further on various people's initiatives for a comprenehsive Ecological Approach protection of forests and development / regeneration of degraded for lands with full participation of local people, along the lines of Joint For Management (JFM).

Proposed by:

S. R. Hiremath and Arun Vinayak.

Similar resolutions along with a letter have been sent to Shri. Kamalana Minister for Environment and Forests by SPS and other Volunt Organisations in Karnataka based on detailed discussions held at Ann General Meeting of Federation of Voluntary Organisations for Ru Development in Karnataka (FEVORD-K) held at Ranebennur on 16-5-9

### Move to Help Industries

### GOVERNMENT MAY OPEN DEGRADED FORESTS

#### Usha Rai

The Environment and Forest Ministry is seriously considering opening degraded forest areas to industries so that they can invest in plantations and meet their requirements of pulpwood and timber.

So far these industries have been importing their requirements of raw material for the paper and plywood industries at a cost of Rs. 1,000 crore a year. With the devaluation of the rupee, the import bill for timber and pulp wood has almost doubled. Industries argue that they will be in the forefront of the greening movement and save the country precious foreign exchange if allowed to invest in plantations in degraded forest areas.

The issue, a contentious one, is believed to have been discussed at a national seminar on 'Raw material supplies to paper and lignocellulosic product industries' organised by the Indian Institute of Forest Management in Delhi, recently. Environment and Forest Minister Kamal Nath addressed the meeting. The discussion will continue next month when forest secretaries, principal chief conservators of forests and the managing directors of forest development corporations will meet in the Environment Ministry.

This is the third time since he took over as the Environment and Forest Minister that Mr. Kamal Nath has raised this controversial issue of involving industries in forestry It is believed that senior officials of the ministry including the foresters do not support the move.

The 1988 forest policy adopted by the Cabinet after 15 year debate, clearly states that the policy of giving concessional treatment to industry for forest areas should be ruled out. It says industry must develop a relationship with farmers and raise raw material on their own rather than depend on the Government and the forests.

Further, the last 40 years experience shows that it is wrong to give priority to industry over the needs of the local people. There is hardly a piece of land in the country on which people do not have some rights. The Karnataka Government's move to involve a Birla company in pulpwood cultivation came a cropper. In Bastar, in the 70s, the move to set up a paper and pulpwood factory with World Bank assistance was stopped by Mrs. Indira Gandhi herself.

The Commerce and Finance Ministers are said to be sympathetic to industries which are finding it increasingly difficult to foot the import bills for timber and pulpwood. Nor are the industries really in a position to shut down their factories.

The handing over of degraded forest areas to industry to speed up greening and save on foreign exchange is being weighed against the merits of preserving our forests as gene pools, rich in biodiversity and as a people's resource.

Earlier, forests were merely seen as carbon sinks. But at the Earth Summit at Rio the value of the country's biodiversity was clearly spelt out. Countries like Canada, where monoculture forest plantations are grown and harvested, like sugarcane, have lost the gene pool of their forests.

The other apprehension is that the minute the captive plantation is handed over to industry in degraded forest areas, it will be cordoned off and local people will no longer have access to it. Some 400 million people in the country depend on forests for minor forest produce and fuel wood. So far people

have been allowed lops and tops of trees, fallen timber and grass.

Of the 65 million hectares of forest land in the country, 25 million hectares is degraded forests. Some 10 million hectares is open forests with little or no trees. If the forests are to be regenerated in 15 years or so, it is estimated that an investment of Rs. 3,000 crores would be needed. So far the Government has been allocating just one percent of its resources of Rs.700 crore for forestry. With this rate of investment and a tree survival rate of 60 to 65 percent it would take 40 years to green the country, argue those who support industry being brought into forestry.

Mr. Kamal Nath seeks to get the investment from industry while working out a package that will protect the biodiversity and the needs of the local people. Instead of monoculture plantations, industry may be asked to grow a mix of half a dozen trees that will be decided by the local forest officials. Clear felling of trees and cutting down of old trees for plantation forestry will be forbidden.

To ensure that people living around the forest areas are not deprived of their needs, it is proposed that industries will cut grass, collect lops and tops and hand them over to the panchayats for distribution or sale to local villagers.

To ensure there is no confrontation between industry and villagers, the plots to be given for plantation work will be selected by the district collectors.

Asked why wasteland, outside the forest area, cannot be given to industry, an official of the Ministry said industries want wastelands close to a source of water as well as to their factories. The land to be allotted for regreening has to be sufficiently large. Though the money will be provided by the industries, the forest development corporations are supposed to manage them.

Ever since the National Wasteland Development Board was up, industries have been trying to gain access to forest land. Kamala Chowdhury, the first chairperson of the Board, alm lost her job on the issue. The new attempt by the indus lobby is bound to generate a lot of heat.

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"In the past the peasants who had small pieces of land who couldn't eke out enough from it for their survival used to eat fruits from the nearby forests and used to collect leaves, flowers and dried tree branches and by selling these to others supplemented their income. They also used to maintain a couple of cows or goats and were living happiliy in their villages depending on the village common grazing land. But H.M.'s Government's conspiratorial bureaucracy have used their foreign intelligence and have newly established the great forest department and have incorporated all mountains, hills, valleys alongwith barren lands, and village common grazing lands in this department, thus making it impossible for the goats of the poor peasants to find even breathing space in the forests .... ".

> - Mahatma Jyotiba Phule from his Marathi book *Shetkaryacha Aasud* (Cultivator's Whipcord), 1882.

'That is why the ecological implications of leasing degraded land need to be considered. Using forests for industry will be setting the clock back showing that we have learnt nothing from the past mistakes of trying to create man-made forests which were ecological disasters, besides completely alienating the people and leading to faster degradation."



"In the ultimate analysis the question to be asked is, whether the claim of the industry over forest lands is based on sound economic rationale, or is it a seductive myth and a ploy to grab the good quality forest lands."

Indian Express, 24th August 1994

N.C.Saxena,
 Director,
 Lal Bahadur Shastri National
 Academy of Administration, Mussourie.